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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904.~~ 1905.

No. ~~889.~~ 106.

THE UNITED STATES, APPELLANT,

vs.

THE DETROIT TIMBER AND LUMBER COMPANY ET AL.

FILED OCTOBER 12, 1904.

No. ~~504.~~ 165.

MARTIN-ALEXANDER LUMBER COMPANY ET AL.
APPELLANTS,

vs.

THE UNITED STATES.

FILED JANUARY 13, 1905.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

(19489 AND 19604.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 389.

THE UNITED STATES, APPELLANT,

vs.

THE DETROIT TIMBER AND LUMBER COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1904, of said court, begun and held at the United States court-house, in the city of St. Paul, Minnesota, on the first Monday in May, to wit, the second day of May, A. D. 1904, before the Honorable Walter H. Sanborn and the Honorable William C. Hook, circuit judges, and the Honorable Charles F. Amidon, district judge.

Attest:

[SEAL.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the second day of December, A. D. 1903, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the western district of Arkansas, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein the United States of America was appellant and the Detroit Timber and Lumber Company et al. were appellees, which said transcript of record, as printed pursuant to the designation of the appellant for use of the court upon the hearing of said cause, is in the words and figures following, to wit:

a In the Circuit Court of the United States for the Texarkana Division of the Western District of Arkansas.

United States of America, Appellant,
vs.
Detroit Timber & Lumber Company, et al., Appellees.

Notice.

To Detroit Timber & Lumber Company, et al., the above appellees:

The appellant in the above entitled cause states that the following parts of the record, in said cause, and no others, are necessary for the consideration of the errors assigned, to-wit:

(1) Complaint.
(2) Order for injunction.
(3) Answer of Detroit Timber & Lumber Company.
(4) Answer of Martin-Alexander Lumber Company.
(5) Amendment to complaint.
(6) Demurrer to amendment.
(7) Testimony of Jim P. Copeland, introduced by appellant.
(8) Testimony of D. D. Brunson.
(9) Testimony of Elmer B. Martin.
(10) Testimony of Arch V. Alexander, introduced by appellant.
(11) Testimony of Uriel L. Clark, introduced by appellant, together with statements and exhibits attached to his deposition.
(12) Testimony of L. F. Rowe, taken by Examiner.
(13) Testimony of George T. Colston, taken by Examiner.
(14) Testimony of Henry Jones, leaving out application to enter lands, timber contract, final proofs and receipts.
(15) Testimony of George T. Colston, taken in criminal case and used in civil case, by agreement, leaving out application to enter lands, timber contract, final proofs and receipts.
b (16) Testimony of Stephen Fuller, leaving out application to enter lands, timber contract, final proofs and receipts.
(17) Testimony of Ezekiel Y. Fuller, leaving out application to enter lands, timber contract, final proofs and receipts.
(18) Testimony of Thomas J. Clements, leaving out application to enter lands, timber contract, final proofs and receipts.
(19) Testimony of Emmett S. Keebaugh, leaving out application to enter lands, timber contract, final proofs and receipts.
(20) Testimony of Charles W. Davis, leaving out application to enter lands, timber contract, final proofs and receipts.

(21) Testimony of R. C. Gregory, leaving out application to enter lands, timber contract, final proofs and receipts.

(22) Testimony of Mary Davis, leaving out application to enter lands, timber contract, final proofs and receipts.

(23) Testimony of Archibald G. Winslow, leaving out application to enter lands, timber contract, final proofs and receipts.

(24) Testimony of Henry P. Hughes, leaving out application to enter lands, timber contract, final proofs and receipts.

(25) Testimony of William F. Waits, leaving out application to enter lands, timber contract, final proofs and receipts.

(26) Testimony of Lawrence C. Horne, leaving out application to enter lands, timber contract, final proofs and receipts.

(27) Testimony of James F. Patterson, leaving out application to enter lands, timber contract, final proofs and receipts.

(28) Testimony of Charles W. Fuller, leaving out application to enter lands, timber contract, final proofs and receipts.

(29) Testimony of Henry M. Lintz, leaving out application to enter lands, timber contract, final proofs and receipts.

(30) Testimony of Seborn Z. Moran, leaving out application to enter lands, timber contract, final proofs and receipts.

(31) Testimony of Bill Dorsey, leaving out application to enter lands, timber contract, final proofs and receipts.

(32) Testimony of J. R. Neel, leaving out statement made by Jim P. Copeland sworn to before Charles A. M. Schlierholz, and the statements made by Arch V. Alexander sworn to before Charles A. M. Schlierholz.

(33) Testimony of L. F. Rowe, taken in the criminal case and introduced in civil case by consent.

(34) Testimony of Frank Buck.

(35) Testimony of R. Ebbs.

(36) Testimony of E. A. Schicker.

(37) Testimony of Jim P. Copeland, introduced by appellees.

(38) Testimony of Uriel L. Clark, taken by appellees in St. Louis, Missouri, leaving out Notary's certificate, Exhibit "A", Exhibit "C", trial balance marked Exhibit "E", estimate of timber lands marked Exhibit "F" and Exhibits marked "G. 1", "G. 2," "G. 3", "G. 4", "G. 5", "G. 6", "G. 7", "G. 8", "G. 9", "G. 10", "G. 11" and "G. 12."

(39) Testimony of A. V. Alexander, taken by Appellees in St. Louis, Missouri.

(40) Testimony of Uriel L. Clark and Roy McDonald, taken in Little Rock, Arkansas, leaving out Exhibit "A" to Clark's deposition also, Notary's certificate.

(41) Stipulation filed April 6th, 1903.

(42) Decree.

(43) Assignment of errors.

(44) Application for appeal.

(45) Allowance of appeal.
(46) Orders continuing injunction in force.

JAMES K. BARNES,
U. S. Attorney.
F. A. YOUMANS,
Assistant U. S. Attorney.
Solicitors for Appellant.

United States vs. Detroit Timber & Lumber Co. et al. Designation by Appellant of record to be printed served on Detroit Timber & Lumber Co. Filed Dec. 2, 1903. John D. Jordan, Clerk.

Service of within notice is accepted this 12th day of September, 1903.

READ & McDONOUGH,
Solicitors for Deft. Detroit Timber & L. Co.

A duplicate copy of this designation was served upon the other appellees.

d Pleas before Honorable John H. Rogers, Judge of the United States District Court for the Western District of Arkansas in the case of the

United States of America
vs.
Detroit Timber and Lumber Company, et al

On August 3rd A. D. 1903.

1 In the Circuit Court of the United States for the Western District of Arkansas, Texarkana Division.

United States of America, Complainant,
vs.
Detroit Timber and Lumber Company, a corporation under the laws of the State of Michigan, Martin-Alexander Lumber Company, a corporation under the laws of the State of Arkansas, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Emma F. Lintz, Bill D. Copeland, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Gus G. Copeland, George T. Colston, Henry Jones, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Copper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Sher-

man L. Garrison, Barbary A. Garrison, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary F. Davis, Emma J. Moran, Jim S. Pennington, Jennie V. Pennington, Charles M. Mackey, Carrie M. Hicks and D. D. Brunson, Defendants.

Bill in Equity.

To the Honorable, the Judges of the Circuit Court of the United States for the Western District of Arkansas, Texarkana Division.

The United States of America brings this bill against the defendants above named, and thereupon, your orator complains and says:

1. That this suit is brought by and under the direction of the Attorney General of the United States,

2. That the said Detroit Timber and Lumber Company is a corporation organized under the laws of the State of Michigan and is operating a saw mill at or near Pike City in the county of Pike, state of Arkansas; that the Martin-Alexander Lumber Company is a corporation organized under the laws of the State of Arkansas, and that all the other defendants are residents of the County of Pike State of Arkansas.

2 That on and prior to the first day of August, 1899, the following lands in Pike County, Arkansas, were vacant lands of the said United States and subject to entry at the land office of the said United States at Camden, Arkansas, under the laws of the said United States applicable to such lands, to-wit:

N.E. 1/4 Sec. 1 Tp. 7 S. R. 25. W.
N. 1/2 S. W. 1/4. and N. 1/2 S. E. 1/4 Sec. 18. Tp. 7 S. R. 24 W.
S. 1/2. S.W. 1/4 Sec. 17. Tp. 7 S. R. 24 W.
S. 1/2 S.E. 1/4. Sec. 18. Tp. 7 S. R. 24 W.
S. 1/2 S.W. 1/4. Sec. 18. Tp. 7 S. R. 24 W.
W. 1/2 N.W. 1/4 Sec. 19. Tp. 7 S. R. 24 W.
N. 1/2 S.W. 1/4. Sec. 2. Tp. 7 S. R. 25 W.
N.E. 1/4 S.E. 1/4 Sec. 3. Tp. 7 S. R. 25 W.
E. 1/2 N.W. 1/4 N.E. 1/4 S.W. 1/4. and N.W. 1/4. S.E. 1/4 Sec. 1 Tp. 7 S 4 25 W.
S. 1/2 S.W. 1/4 and S.W. 1/4 S.E. 1/4 Sec. 1. Tp. U. S. R. 25. W.
S.W. 1/4 S.E. 1/4 and S. 1/2 S.W. 1/4 Sec. 13. Tp. 7 S. R. 25 W.
N.E. 1/4 N.W. 1/4 Sec. 24. Tp 7 S. R. 25 W.
E. 1/2 N.E. 1/4 and N.E. 1/4 S.E. 1/4 Sec. 24. Tp 7 S. R. 25 W.
S.E. 1/4 S.E. 1/4 Sec. 13. Tp. 7 S. R. 25 W.
N. 1/2 S.E. 1/4 and N. 1/2 S.W. 1/4 Sec. 13. Tp 7 S. R. 25 W.
N. 1/2 S.E. 1/4 Sec. 15. Tp. 7 S. R. 25 W.

N. 1/2 S.W. 1/4 Sec. 14. Tp 7 S. R. 25 W.
S. 1/2, S.W. 1/4 Sec. 14. Tp. 7 S. R. 25 W.
S. 1/2 S.E. 1/4 Sec. 15. Tp 7 S. R. 25 W.
S. 1/2. N.E. 1/4 Sec. 2. Tp. 7 S. R. 25 W.
E. 1-2 S.E. 1-4 S.W. 1-4 S.E. 1-4 and S.E. 1-4 S.W. 1-4 Sec. 12. Tp 7 S. R. 25 W.
N.W. 1-4 N.E. 1-4. N. 1-2 N.W. 1-4 and S-W. 1-4 N.W. 1-4 Sec. 12. Tp 7 S. R. 25 W.
S.W. 1-4 S.W. 1-4 Sec. 26. Tp. 6 S. R. 25 W.
S.E. 1-4 S.E 1-4 Sec. 27. Tp 6 S. R. 25 W.
S.W. 1-4 Sec. 35. Tp. 6 S. R. 25 W.
S. 1-2 N.W. 1-4. and N. 1-2. S.W. 1-4. Sec. 23. Tp 7 S. R. 25 W.
E. 1-2 N.W. 1-4, and N.W. 1-4, N.W. 1-4 Sec. 17. Tp 7 S. R. 24 W.
W. 1-2 N.E. 1-4 and E. 1-2 N.W. 1-4. Sec. 19. Tp 7 S. R. 24 W.
N.E. 1-4 Sec. 21. Tp 6 S. R. 25 W.
S.W. 1-4. Sec. 21. Tp 6 S. R. 25 W.
N.E 1-4. Sec. 20, Tp 6 S. R. 25 W.
N.W. 1-4, Sec. 21. Tp 6 S. R. 25 W.
N.W. 1-4 Sec. 22. Tp 6 S. R. 25 W.
3 S. 1-2, S.W 1-4 Sec. 14. Tp 6 S. R. 25 W.
W. 1-2, N.E. 1-4, and W. 1-2 S.E. 1-4. Sec. 22. Tp 6 S. R. 25 W.
N. 1-2 S.W. 1-4 and S.E. 1-4. S.W. 1-4 Sec. 22. Tp 6 S. R. 25 W.
N.E. 1-4, N.W. 1-4 Sec. 27. Tp 6 S. R. 25 W.
E. 1-2. S.E, 1-4 and S.E. 1-4. N.E. 1-4 Sec. 22. Tp 6 S. 4 25 W.
N.E. 1-4. N.E. 1-4 Sec. 27. Tp. 6 S. R. 25 W.
W. 1-2. S.E. 1-4 and S.E. 1-4 S.E. 1-4. Sec. 15. Tp 6 S. R. 25 W.
S.W. 1-4 Sec. 15. Tp 6 S. R. 25 W.
N.E. 1-4. Sec. 11. Tp 7 S. R. 25 W.
N.W. 1-4. Sec. 11. Tp 7 S. R. 25 W.
N.E. 1-4. N.E. 1-4 Sec. 22. Tp 6 S. R. 25 W.
N. 1-2. N.W. 1-4. and N.W. 1-4. N.E. 1-4 Sec. 23. Tp 6 S. R. 25 W.
S.W. 1-4. N.W. 1-4 and N. 1-2. S.W. 1-4 Sec. 23. Tp 6 S. R. 25 W.
E. 1-2. N.W. 1-4. and S.W. 1-4. N.W. 1-4 Sec. 25. Tp 6 S. R. 25 W.
S.E. 1-4 N.E. 1-4 Sec. 26. Tp 6 S. R. 25 W.
S.E. 1-4. Sec. 26. Tp 6 S. R. 25 W.
S.E. 1-4 Sec. 25. Tp 6 S. R. 25 W.
S. W. 1-4 Sec. 25. Tp 6 S. R. 25 W.
N.E. 1-4. Sec. 25. Tp 6 S. R. 25 W.
S.E. 1-4 Sec. 20. Tp 6 S. R. 25 W.
N.E. 1-4. S.E. 1-4, Sec. 21. Tp 6 S. R. 25 W.
N. 1-2 N.E. 1-4 and N. 1-2 N.W. 1-4. Sec 23. Tp 6 S. R. 25 W.
S.W. 1-4 S.W 1-4 Sec. 34. Tp 6 S. R. 25 W.

4. That on or about said last mentioned date Elmer B. Martin, Arch V. Alexander, and Jim P. Copelend conspired

together to defraud the said United States of said lands and to obtain the timber growing thereon for the said Martin-Alexander Lumber Company, then and before that time operating a saw mill at or near Pike City Arkansas, of which corporation the said Elmer B. Martin was then the President, the said Arch V. Alexander the Secretary, and Jim P. Copeland, an employee.

5. That to effect such fraudulent purpose, the said Martin, Alexander and Copeland induced and procured the defendants, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Emma F. Lintz, Bill D. Copeland, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Gus G. Copeland, George T. Colston, Henry Jones, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts Lawrence C.
4 Horne, William F. Waits, Sherman L. Garrison, Barbary A. Garrison, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary E. Davis, Emma J. Moran, Jim S. Pennington, Jennie V. Pennington, Charles S. Mackey, Carrie M. Hicks, fraudulently to make application at the land office of the said United States at Camden, Arkansas, to enter each a separate portion of the said lands, hereinbefore described under the following acts of Congress of the United States to-wit; An Act approved June 3rd 1878, entitled, "An Act for the sale of timber lands in the states of California, Oregon, Nevada, and in Washington Territory" and an act approved August 4th 1892, entitled "An Act to authorize the entry of lands chiefly valuable for building stone, under the Placer Mining Laws".

6. That said defendants, upon the procurement of Martin, Alexander and Copeland, as aforesaid, made such applications and entered each, under said acts of Congress, at the land office aforesaid, a separate portion of said lands, as follows, to-wit:

John H. Scott, August 22nd 1899. N.E. 1-4 Sec. 1. Tp 7 S. R 25 W.

Thomas J. Clements, August 22nd 1899. N. 1-2. S.W. 1-4. and N. 1-2. S.E. 1-4 Sec. 18 Tp 7 S. R. 24 W.

Jim P. Copeland, August 22nd, 1899 S. 1-2 S.W. 1-4 Sec 17. and S. 1-2. S.E. 1-4 Sec 18. Tp 7 S. R 24 W.

John H. Wilson, August 22nd 1899, S 1-2, S.W. 1-4 Sec 18 and W 1-2 N.W. 1-4 Sec 19. T 7 S. R. 25 W.

Robbie J. Hughes, August 22nd, 1899, N. 1-2 S.W 1-4 Sec 2, and N.E. 1-4 S.E. 1-4 Sec 3 Tp 7 S. R. 25 W.

Robertson C Gregory. August 22nd 1899. E. 1-2 N.W. 1-4, N.E. 1-4 S.W. 1-4 and N.W. 1-4 S.E. 1-4 Sec 1. Tp 7 S. R 25 W.

Martha Gregory, August 22nd 1899, S. 1-2, S.W. 1-4 and S.W. 1-4. S.E. 1-4 Sec 1. Tp 7 S. R. 25 W.

Joseph O. Means. October 13 1899, S.W. 1-4. S.E. 1-4. and S 1-2 S.W. 1-4 and N.W. 1-4. N.W. 1-4. Sec 24. Tp 7 S. R 25 W.

Archibald G Winslow. October 13 1899, E 1-2. N.E. 1-4 and N.E. 1-4. S.E. 1-4. Sec 24. and S.E. 1-4. S.E. 1-4 Sec 13. Tp 7 S R 25 W.

Caroline H Means. October 13 1899. N. 1-2 S.E. 1-4 and N. 1-2 S.W. 1-4 Sec 13. Tp 7 S. R 25 W.

Emma Winslow. October 13 1899. N 1-2 S.E. 1-4 Sec 15 and N. 1-2 S.W. 1-4 Sec 14. Tp 7 S. R 25 W.

James F Patterson. October 13 1899. S. 1-2 S.W. 1-4. Sec 14. and S. 1-2 S.E. 1-4 Sec 15. Tp 7 S. R 25 W.

5 Emma E. Lintz. March 1 1900 S. 1-2 N.E. 1-4 Sec 2 Tp 7 S. R 25 W.

Bill D Copeland. March 1 1900. E. 1-2 S.E. 1-4, S.W. 1-4 S.E. 1-4 and S.E. 1-4 S.W. 1-4. Sec 12. Tp 7 S. R. 25 W.

Henry M Lintz. March 1 1900. N.W. 1-4. N.E. 1-4. N. 1-2 N.W. 1-4. and S.W. 1-4 N.W. 1-4. Sec 12. Tp 7 S.R. 25 W.

Rosa L Anderson. April 17 1900. S.E. 1-4. S.E. 1-4. Sec 27 and S.W. 1-4. S.W. 1-4 Sec 26. Tp 6 S. R. 25 W.

William F Anderson. April 17 1900. S.W. 1-4 Sec 35. Tp 6 S. R. 25 W.

Gus G Copeland. April 24th 1900. S. 1-2 N.W. 1-4 [ans] N. 1-2 S.W. 1-4 Sec 23 Tp 7 S 4 25 W.

George T Colston, April 24 1900. E. 1-2 N.W. 1-4 and N.W. 1-4 N.W. 1-4 Sec 17 Tp 7 S. R 25 W.

Henry Jones. April 24 1900. W. 1-2 N.E. 1-4 and E. 1-2. N.W. 1-4 Sec 19 Tp 7 S R 24 W.

Bedford F Patterson, May 2nd 1900. N.E. 1-4. Sec 21. Tp 6 S. R 25 W.

Emmett S Keebaugh. May 2nd 1900. S.W. 1-4 Sec 21. Tp 6 S. R 25 W.

Charles W. Fuller. May 2nd 1900. N.E. 1-4 Sec 20. Tp 6 S. R 25 W.

Henry P Hughes. May 2nd 1900. N.W. 1-4 Sec 21. Tp 6 S. R 25 W.

Stephen A Fuller. May 25 1900. N.W. 1-4. Sec 22. Tp 6 S. R. 25 W.

Alvin Pry. May 25 1900. S. 1-2. S.W. 1-4 Sec 14. Tp 6 S. R 25 W.

George W Cooper. May 25 1900. W. 1-2. N.E. 1-4 and W. 1-2 S.E. 1-4. Sec 22. Tp 6 S. R 25 W.

Ezekiel Y Fuller. May 25 1900. N. 1-2, S.W. 1-4, S.E. 1-4. S.W. 1-4. Sec 22. and N.E. 1-4 N.W. 1-4 Sec 27. Tp 6 S. R 25 W.

Willis Cooper. May 25 1900. E. 1-2 S.E. 1-4, S.E. 1-4 N.E. 1-4. Sec 22 and N.E. 1-4 N.E. 1-4. Sec 27. Tp 6 S. R 25 W.

Thomas Roberts. May 25 1900. W. 1-2 S.E. 1-4. and S.E. 1-4. S.E. 1-4 Sec 15. Tp 6 S. R 25 W.

Mittie C. Roberts. May 25 1900. S.W. 1-4 Sec 15. Tp 6 S. R 25 W.

Lawrence C Horne. June 6 1900. N.E. 1-4. Sec 11. Tp 7 S R 25 W.

William F Waits. June 6 1900. N.W. 1-4. Sec 11. Tp 7 S R 25 W.

Sherman L Garrison. June 6 1900. N.E. 1-4. N.E. 1-4 Sec 22. N. 1-2 N.W. 1-4 and N.W. 1-4. NE 1-4 Sec 23. Tp 6 S. R 25 W.

Barbary A Garrison June 6 1900. S. 1-2. N.W. 1-4 and N. 1-2 S.W. 1-4 Sec 23. Tp 6 S. R 25 W.

Seborn Z Moran, July 5 1900. E. 1-2 N.W. 1-4, S.W. 1-4 N.W. 1-4. Sec 25 and S.E. 1-4 N.E. 1-4 Sec 26. Tp 6 S. R 25 W.

Charles W Davis. July 5th 1900. S.E. 1-4 Sec 26. Tp 6 S. R 25 W.

6 Bill Dorsey July 5th 1900. S.E. 1-4 Sec 25. Tp 6 S. R 25 W.

Mary F Davis. July 5th 1900. S.W. 1-4 Sec 25. Tp 6 S. R. 25 W.

Emma J Moran. July 5 1900. N.E. 1-4 Sec 25. Tp 6 S. R. 25 W.

Jim S Pennington. September 5 1900. S.E. 1-4 Sec 20. Tp 6 S. R 25 W.

Jeunie V Pennington. September 5 1900. N.E. 1-4 S.E. 1-4 Sec 21, Tp Y S. R 25 W.

Charles W Mackey. September 5 1900. N. 1-2. N.E. 1-4. and N. 1-2 N.W. 1-4 Sec 23 Tp 7 S. R 25 W.

Carrie M Hicks. September 5 1900. S.W. 1-4. S.W. 1-4. Sec 34. Tp 6 S 4 25 W.

7. Your orator further states that before said entries were made by said defendants, as aforesaid, the said Martin, Alexander and Copeland, acting for said Martin & Alexander Lumber Company, entered into an agreement with each and every of said entrymen, that each and every entry made by them respectively, as aforesaid, should be made for the use and benefit of the said Martin-Alexander Lumber Company, and that on the issuance of the Receiver's receipt to each of said entrymen, he or she should at once execute to said Martin-Alexander Lumber Company a conveyance conveying to it all of the timber and trees standing, growing and being upon the tract of land entered by said entrymen, together with the full and free liberty of entry and right of way for the said Martin & Alexander Lumber Company, its servants, workmen and teams in,

through, over and upon said premises, for the purpose of felling, cutting down and conveying away the said trees or converting the same into lumber upon said premises, and to erect saw mills and other buildings thereon, for that purpose, and to remove the same therefrom, and also to build and construct railways, tramways, and wagon roads over, across and upon said premises, and to maintain the use of the same, and to dig wells, build corrals and keep cattle, mules and horses thereon, and to have such privileges for the term of 99 years.

8. Your orator further states that it was agreed, prior to the making of said entries, by and between said Martin, Alexander and Copeland and each of said entrymen that the said Martin-Alexander Lumber Company should pay all expenses of said entrymen and should pay the purchase price of said lands, and pursuant to said agreement the said Martin, Alexander and Copeland transported said entrymen at various times, between the first of August 1899 and the 15th of September 1900, from their homes at or near Pike City Arkansas, to Camden Arkansas, to make said entries and proofs thereon; paid their railroad fares to and from Camden, paid their hotel bills at Camden, paid all fees at said land office, paid the cost of publication of notices of each [entrymen] and paid the purchase price of said lands.

7 9. Your orator further states that said Martin, Alexander and Copeland, notwithstanding the agreements aforesaid, induced and procured each of said entrymen to make an affidavit before the officers of the said land office that he or she did not apply to purchase the land described in his or her said affidavit on speculation, but in good faith to appropiate it to his or her own exclusive use and benefit and that he or she had not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title he or she might acquire from the United States should inure in whole or in part to the benefit of any person except the said applicant; that Martin, Alexander and Copeland procured the witnesses for each [entrymen] to make the proof required by law; and after said entries were made, as aforesaid, and Receiver's receipts issued to said entrymen, each of them except Seborn Z. Moran, Emma J. Moran and Bill Dorsey, executed a conveyance and lease to said Martin & Alexander Lumber Company conveying to it the timber growing on the lands entered by him or her respectively by a conveyance containing the stipulation and agreements hereinbefore set out.

10. Your orator further states that without knowledge of the frauds practiced as aforesaid, by said Martin, Alexander and

Copeland, and the said entrymen in making said entries, the proper officers of the United States issued patents to said entrymen, conveying to each the lands entered by him or her respectively, as hereinbefore set out; that such patents were issued to the following named defendants on the 24th day of February 1900; John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robert C. Gregory, and Martha Gregory; to the following named defendants on the 8th day of September 1900; Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow and James F. Patterson; to Henry M. Lintz on the 28th day of November 1900; to the following named defendants on the 9th day of February 1901; Rosa L. Anderson, William F. Amderson, Gus C. Copeland, George T. Colston, Henry Jones, Bedford Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Sherman Garrison and Barbary Garrison; to the following named defendants on March 23rd 1901; Emmaf F. Lintz, Bill D. Copeland, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary F. Davis, Emma J. Moran and to the following named defendants on the 8th day of May 1901, Jim S. Pennington, Jennie V. Pennington, Charles W. Mackey and Carrie M. Hicks.

8 11. Your orator further states that on the 14th day of January 1901, the said Martin,-Alexander Lumber Company sold, assigned and transferred to defendant, Detroit Timber and Lumber Company, all said timber contracts and leases for the timber on said lands and that before and at the time of such sale, assignment and transfer, the said Detroit Timber and Lumber Company had full and [complate] knowledge of all the fraudulent acts of the said Martin, Alexander and Copeland in procuring said entries to be made as hereinbefore alleged; of the fraudulent agreements between said Martin, Alexander and Copeland and the said entrymen as hereinbefore alleged, and had full and complete knowledge that the affidavits of each and every of said entrymen in making said entries was false, and that said entries had been made for the use and benefit of the said Martin-Alexander Lumber Company.

12. Your orator further states that since the said purchase from the said Martin-Alexander Lumber Company the said Detroit Timber And Lumber Company has obtained a deed from each of the following named defendants: Robbie J. Hughes, Rosa L. Anderson, William F. Anderson, Bedford Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper,

Ezekiel Y. Fuller, Willsi Cooper, Thomas Roberts, Lawrence C. Horne, William F. Waits, Charles W. Davis, Mary E. Davis, Jim S. Pennington, Jennie V. Pennington, and Carrie M. Hicks, conveying to said Detroit Timber and Lumber Company the lands entered by them respectively, as aforesaid. That defendants Seborn Z. Moran, Emma J. Moran and Bill Dorsey conveyed the [labds] entered by them respectively as [aforesaod] to defendant D. D. Brunson, who in taking such conveyance acted as the agent of said Detroit Timber and Lumber Company.

13. Your orator further states that the said Martin-Alexander Lumber Company have cut and removed and appropriated to their own use from the timber growing on said lands, six million feet of lumber of the value of Sixty Thousand Dollars, and that said Detroit Tomber and Lumber Company is now cutting the timber from said lands. That said lands are valuable only for the timber growing thereon, and if said company is not restrained from cutting said timber from said lands great and irreparable injury will be done to complainant.

14. Your orator [turther] states that all of said patents, timber contracts and leases are clouds on its title to said lands.

In Consideration whereof, and for as much as your orator has no sufficient remedy at law for the wrongs done and threatened to [ne] done, to the end that it may obtain the relief to which it is justly entitled in the premises, your orator prays:

1. That a writ of Subpoena be granted, directed to the defendants hereinbefore named, requiring and commanding them, and each of them, to appear herein and answer, but not under oath, the several allegations in this bill contained.

9 2. That all of the said patents purporting to convey title to said lands, above described, be declared null and void and set aside and canceled, that all of said conveyances, contracts and leases from said original patentees and said conveyances to and from said D. D. Brunson, purporting to convey title to, or an interest in, or a right to cut and remove timber from, or any right whatever in said lands be declared null and void, and set aside and canceled and that the title to all of said lands be vested in the United States.

3. That an account be taken of the timber cut and removed from said lands by said Martin-Alexander Lumber Company and Detroit Timber and Lumber Company, and that your

orator have judgment against each of said corporations for the value of the timber cut by it.

4. That a writ of injunction be granted to your orator commanding said Detroit Timber and Lumber Company and all persons claiming to act under its authority, direction or control, absolutely to desist and refrain from cutting any timber on said lands until such time as your Honor shall appoint and direct, and that upon the final determination of this suit said injunction may be made perpetual.

5. That your orator may have such other and further relief, preliminary and final, as to the court may seem meet and equitable.

And your orator will ever pray.

JAMES K. BARNES,
U. S. Attorney W. D. Ark.
F. A. YOUMANS,
Assistant U. S. Attorney W. D. Ark.
Solicitors for Complainant.

10 United States of America,
Western District of Arkansas,
Fort Smith Division.

Charles A. M. Schlierholz, being duly sworn, deposes and says that he is a Special Agent of the General Land Office of the United States, that he has read the above and foregoing bill of Complaint and know the contents thereof, that he has made an investigation of the facts set forth in said bill and that from such investigation he believes the matters in said bill stated to be true.

CHARLES A. M. SCHLIERHOLZ.

Subscribed and sworn to before me this 5th day of April, 1902.
[Seal] H. B. ARMISTEAD,
Clerk of the District Court of the United States, Western District of Arkansas, Fort Smith Division.
By Florence Hammersly, D. C.

11 In the Circuit Court of the United States for the Western District of Arkansas, Texarkana Division.

United States of America, Complainant.
vs.
Detroit Timber and Lumber Company, et al. Defendants.

Preliminary Injunction.

The President of the United States to the Detroit Timber and Lumber Company:—

Whereas, in the above named cause, it had been made to appear upon the bill of Complaint, filed herein, that a writ of injunction preliminary to the final hearing is proper, and that Prima Facie the Complainant is entitled thereto, enjoining the Defendants, Detroit Timber and Lumber Company, from the acts complained of and threatened to be committed.

Therefore, Complainant's application for such restraining order is hereby granted.

Now therefore it is ordered, that you, the said Detroit Timber and Lumber Company, one of the defendants herein, your Agents, servants and employees and all persons acting by and under your authority or direction, be and you are hereby specially restrained and enjoined from cutting and removing any timber standing, growing or being upon the following described lands in Pike County Arkansas, to-wit:

N.E. 1-4 Sec. 1 Tp 7 S. R. 25 W.
N. 1-2 S.W. 1-4 and N. 1-2 S.E. 1-4 Section 18. Tp 7 S. R. 25 W.
S. 1-2 S.W. 1-4 Section 17. Tp 7 S. R. 25 W.
S. 1-2 S.E. 1-4 Section 18. Tp. 7 S. R. 25 W.
S. 1-2 S.W. 1-4 Section 18. Tp 7 S. R. 25 W.
W. 1-2 N.W. 1-4 Section 19. Tp. 7 S. R. 25 W.
N. 1-2 S.W. 1-4 Section 2 Tp. 7. S. R. 25 W.
N. E. 1-4. S.E. 1-4 Section 3. Tp 7. S. R. 25. W.
E. 1-2. N.W. 1-4. N.E. 1-4. S.W. 1-4 and N.W. 1-4, S.E. 1-4 Section 1 Tp 7 S. 4 25 W.
S. 1-2 S.W. 1-4. and S.W. 1-4 S.E. 1-4 Section 1. Tp 7. S. R. 25 W.
S.W. 1-4 S.E. 1-4 and S. 1-2 S. W. 1-4, Section 13. Tp. 7. S. R. 25 W.
E. 1-2 N.E. 1-4 and N.E. 1-4 S.E. 1-4 Section 24. Tp 7. S. 4 25 W.
N.E. 1-4 S.E. 1-4 Section 24 Tp. 7 S. R. 25. W.
S.E. 1-4, S.E. 1-4 Section 13. Tp. 7. S. R. 25. W.
N. 1-2. S.E. 1-4 and N. 1-2. S.W. 1-4 Section 13. Tp. 7. S. R. 25 W.
N. 1-2 S.E. 1-4. Section 15. Tp. 7, S. R. 25. W.
12 N. 1-2. S.W. 1-4 Section 14. Tp. 7. S. R. 25. W.
S. 1-2 S.W. 1-4 Section 14. Tp. 7. S. R. 25. W.
S. 1-2. S.E. 1-4 Section 15. Tp. 7. S. R. 25. W.
S. 1-2. N.E. 1-4. Section 2. Tp. 7 S. R. 25. W.
E. 1-2. S.E. 1-4. S.W. 1-4 S.E. 1-4 and S.E. 1-4 S.W. 1-4 Section 13. Tp. 7. S. R. 25. W.
N.W. 1-4. N.E. 1-4. N. 1-2. N.W. 1-4 and S.W. 1-4. N.W. 1-4 Section 12. Tp. 7. S. R. 25. W.
S.W. 1-4. S.W 1-4 Section 26. Tp. 6. S. R. 25. W.
S.E. 1-4, S.E. 1-4 Section 27. Tp. 6. S. R. 25. W.
S.W. 1-4. Section 35. Tp. 7. S. R. 25. W.

S. 1-2 N. W. 1-4 and N. 1-2 S. W. 1-4 Section 23. Tp. 7. S. R. 25 W.
E. 1-2 N. W. 1-4. and N.W. 1-4 N.W. 1-4 Section 17. Tp 7 S. R. 24. W.
W. 1-2. N.E. 1-4. and E 1-2. N.W. 1-4. Section 19. Tp. 7. S. R. 24. W.
N.E. 1-4 Section 21 Tp 6. R. 25. W.
S.W. 1-4 Section 21. Tp. 6, S. R. 25. W.
N.E. 1-4 Section 20. Tp. 6, S, R. 25. W.
N.W. 1-4 Section 21. Tp. 6. S. R. 25. W.
N.W. 1-4 Section 22. Tp. 6, S. R. 25. W.
S. 1-2. S.W. 1-4 Section 11. Tp. 6. S. R. 25. W.
W. 1-2. N.E. 1-4. and W. 1-2 S.E. 1-4 Section 22. Tp. 6 S. R. 25 W.
N. 1-2, S.W. 1-4. and S.E. 1-4. S.W. 1-4. Section 22. Tp 6 S. R. 25 W.
N.E. 1-4 N.W. 1-4 Section 27. Tp. 6. S. R. 25. W.
E. 1-2. S.E. 1-4. and S.E. 1-4. N.E. 1-4 Section 22. Tp. 6. S. R. 25. W.
N.E. 1-4 N.E. 1-4 Section 27. Tp. 6 S. R. 25. W.
W. 1-2 S.E. 1-4 and S. E. 1-4 S.E. 1-4 Section 15. Tp. 6. S. R. 25 W.
S.W. 1-4. Section 15. Tp. 6. R. 25. W.
N.E. 1-4. Section 11. Tp. 6. 4. 25. W.
N.W. 1-4. Section 11. Tp. 6. S. R. 25. W.
N.E. 1-4 N.E. 1-4 Section 22. Tp. Y. R. 25. W.
N. 1-2. N.W. 1-4 and N.W. 1-4. N.E. 1-4 Section 23. Tp. 6. R. 25. W.
S.W. 1-4. NW 1-4 and N. 1-2. S.W. 1-4. Section 23. Tp. 6. S. R. 25. W.
E. 1-2 N.W. 1-4, and SW. 1-4, N.W. 1-4 Section 25. Tp. U. S. R. 25. W.
S.E. 1-4, N.E. 1-4, Section 26. Tp. 6. S. R. 25. W.
S.E. 1-4 Section 26. Tp. 6. S. 4. 25. W.
S.E. 1-4 Section 25. Tp. 6. S. R. 25. W.
S.W. 1-4 Section 25. Tp. 6. S. 4. 25. W.
N.E. 1-4. Section 25. Tp. 6. S. R. 25. W.
S.E. 1-4 Section 20. Tp. 6. S. R. 25. W.
N.E. 1-4, N.E. 1-4, Section 21. Tp. 6. S. R. 25. W.
N. 1-2. N.E. 1-4 Section 23. Tp. 6. S. R. 25. W.
S.W. 1-4 S.W. 1-4 Section 34. Tp. 6. S. 4. 25. W.

13 until the further orders of this court.

It is further ordered that a copy of this order certified under the hand of the Clerk and seal of this court be served on the defendant, Detroit Timber and Lumber Company, to be restrained thereby.

It is further ordered, that this injunction is temporary and that the defendant, Detroit Timber and Lumber Company may appear and show cause, if it can, on the 19th day of April 1902, why this temporary restraining order hereby granted, should not be continued.

Dated at Fort Smith, in the Western District of Atkansas, this fifth day of April, A. D. 1902.

JOHN H. ROGERS,

United States District Judge for the Western District of Arkansas.

Indorsed: No. 85. United States of America vs. The Detroit Timber and Lumber Company, et al. Bill in Equity. Filed, before summons issued, April 7th 1902, at 8½ o'clock A. M. Jno. M. Somervell, Clerk.

14 In the Circuit Court of the United States for the Western District of Arkansas, Texarkana Division.

United States of America, Complainant,

vs.

Detroit Timber and Lumber Company, a corporation under the [the] laws of the State of Michigan, Martin-Alexander Lumber Company, a corporation under the laws of the State of Arkansas, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph H. Means, Archibald G. Winslow, Caroline H . Means, Emma Winslow James W. Patterson, Emma E. Lintz, Bill D. Copeland, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Gus G. Copeland, George T. Colston, Henry Jones, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William V. Waits, Sherman L. Garrison, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary E. Davis, Emma J. Moran, Jim S. Pennington, Jennis V. Pennington, Charles M. Mackey, Carrie M. Hicks and D. D. Brunson, Defts.

Separate Answer of the Martin-Alexander Lumber Company.

1. For answer to the first paragraph of said complaint, this defendant admits that this suit was brought, by and under the direction of the Attorney General of the United States.

2. For answer to the second paragraph of said complaint, this defendant admits that it was organized as a corporation,

under the laws of the State of Arkansas, and that the Detroit Timber and Lumber Company is a Michigan corporation.

3. For answer to paragraph three of the complaint, this defendant admits that the lands mentioned and described in the said third paragraph of said complaint, were on and prior to the first day of August 1899, vacant lands of the United States, and subject to entry at the Land Office, at Camden Arkansas, under the laws of the said United States, applicable to said lands, and it alleges that said lands were at that time, subject to cash entry, at double minium price, under the
15 "Timber and Stone Act", approved June 3 1878, as amended and extended by the Act approved August 4 1892.

4. For answer to the fourth paragraph of the complaint, this defendant admits that at the time mentioned therein, the said Elmer B. Martin was President, Arch. V. Alexander, Secretary and Jim P. Copeland, an employee of the Martin-Alexander Lumber Company, and that said Company was then, and before that time, running a saw mill at Pike City, Arkansas, but it denies that the said Martin, Alexander and Copeland, on or about that time, or at any other time, conspired together to defraud the said United States of the said lands, and to obtain the timber growing thereon, for the said Martin-Alexander Lumber Company, as alleged in said paragraph of said complaint, or otherwise.

5. For answer to the fifth paragraph of the complaint, this defendant admits that John S. Scott and the other 43 defendants, whose names follow immediately after that of the said Scott, in said fifth paragraph, each made application to enter a separate portion of the said lands, under said Acts of Congress, but it denies that any of them were induced or procured fraudulently to do so, by the said Martin, Alexander and Copeland, to effect the fraudulent purpose charged in paragraph four of said complaint, and it denies that there was any fraudulent purpose or acts on the part of the said Martin, Alexander and Copeland, in connection with said applications, and it denies that any of said applications to enter were fraudulent or that any of the averments or declarations contained, were false or fraudulent.

6. For answer to the sixth paragraph of the complaint herein, this defendant admits that said John H. Scott and the other 43 defendants, whose names follow immediately after that of the said Scott, in said sixth paragraph, made applications on the several days mentioned therein, and entered and purchased for cash each, under the said Act of Congress, at said land office, the separate portion of said land alleged in said para-

graph, to have been entered by him or her, but it denies that the said applications and entries of said defendants were made upon the procurement of the said Martin,-Alexander and Copeland.

7. For answer to the seventh paragraph of the complaint herein, this defendant denies that the said Martin, Alexander and Copeland, before said entries mentioned in paragraph six were made by the said defendants, as aforesaid, entered into an agreement with each and every one of said defendant entrymen, to convey to the Martin-Alexander Lumber Company, on the issuance of the Receiver's receipt to each, all of the timber on the lands entered by him or her respectively, by
16 a conveyance containing the stipulations and agreements in said paragraph set out. And it also denies that there was any agreement between the said Martin, Alexander and Copeland, or either of them, with the said forty-four entrymen, or either of them, prior to said entries, that the timber on the lands to be entered should be conveyed to it, and it denies that said entrymen, or any of them, acted for it in making said entries, and it denies that any contract or agreement whatever, about said land or the timber thereon, was ever made between it, or any person or persons, for it and the said entrymen or any of them, until after the said entrymen had purchased and paid for said land. The defendant further says that it is informed and believes that said entrymen applied to purchase and did purchase said lands, in good faith, to appropriate the same to their own use, and did so appropriate the same.

8. For answer to the eighth paragraph of the complaint herein, this defendant denies that it was agreed by and between said Martin, Alexander and Copeland, and each of said entrymen, prior to the making of said entries, that the said Martin,-Alexander Lumber Company should pay all expenses of said entries and should pay the purchase price of said lands. It also denies that [that] the said Martin, Alexander and Copeland, transported said entrymen from their homes to Camden, Arkansas, to make said entries thereon; it denies that they paid their railroad fares, hotel bills, fees, cost of publication, and the purchase price of said lands, or any part thereof, as alleged in paragraph eight of said complaint.

9. For answer to the ninth paragraph of the complaint herein, this defendant denies that after said cash entries were made, and after the purchase money and land office fees had all been paid as required by law, and after the Receiver's receipts in said paragraph mentioned, had been issued to said entrymen,

each of them, except Seborn Z. Moran, Emma J. Moran and Bill Dorsey, executed what is commonly called a timber contract, to said Martin-Alexander Lumber Company, conveying to it the timber growing on the lands entered by him or her respectively, but admits that said entrymen executed timber contracts, except Seborn Z. Moran, Emma J. Moran, Bill Dorsey, Henry M. Lintz and Emma E. Lintz. It also denies that the said Martin, Alexander and Copeland induced and procured each of said entrymen to make false and fraudulent affidavit before the officers of the land office, to the effect that he or she did not apply to purchase the land, described in his or her said affidavit, on speculation, but in good faith, to approp-iate it to his or her own exclusive use and benefit, and that
17 he or she had not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person, or persons whomsoever, by which the title he or she might acquire from the United States, should inure in whole or in part to the benefit of any person, except the said applicant, and it also denies that the affidavits made by each of said entrymen was false and fraudulent. And it also denies that the said Martin, Alexander and Copeland procured the witnesses for each [entrymen] to make proof as required by law, and it denies that the proof made by said entrymen was false or fraudulent.

10. For answer to the tenth paragraph of the complaint, this defendant admits that on the several days mentioned in said paragraph, the plaintiff, through the proper officers, pursuant to said final receipt and in consideration of the payment of the purchase money and fees required by law, gave and granted to each of the said defendants named in said paragraph, ten, his or her heirs and assigns, by patent, the lands entered and purchased by each, as alleged but it denies that in doing so the plaintiff or its officers relied upon any false or fraudulent applications, or upon any false or fraudulent testimony, and it denies that there was any fraud practiced by the said Martin, Alexander and Copeland and the said entrymen, to obtain said patents.

11. For answer to paragraph eleven of the complaint herein, this defendant admits that the Martin-Alexander Lumber Company sold its property to the Detroit Timber and Lumber Company, but denies that the said Detroit Timber and Lumber Company had any notice of any fraudulent acts of the said Martin, Alexander and Copeland in procuring said entries to be made, or of any fraudulent agreement between them and the said entrymen, or of any false affidavits made by said entrymen, and it also denies that the Detroit Timber and Lumber

Company had any notice that said entries had been made for the use and benefit of the Martin-Alexander Lumber Company, and it alleged that no such fraudulent agreement had been made by the said Martin, Alexander and Copeland, and no fraudulent acts had been committed by them in connection with said entries, and it states that none of said entries were made for this company.

12. For answer to the twelfth paragraph of the complaint herein, this defendant states that it is informed and believes that said Detroit Timber and Lumber Company has obtained by purchase a deed from each of the 25 entrymen mentioned in said paragraph.

13. For answer to the thirteenth paragraph in said complaint, this defendant denies that it and the Detroit Timber and Lumber Company have cut and removed and appropriated to their own use, from the timber growing on the lands
18 in controversy, six million feet of lumber of the value of $60,000.00 and it denies that the plaintiff has any right to ask for an accounting in this action.

14. For answer to the fourteenth paragraph of the complaint, this defendant denies that all or any of the said timber contracts and leases, executed to it, are clouds on the title of the United States to said lands, and it alleges that said complainant has long since parted with its title, by issuing thereto, valid patents and it now has no title to any of said lands. And it denies that there is any equity in said complaint.

Wherefore, the Martin-Alexander Lumber Company prays that Complainant's bill herein, be dismissed with cost against it, and for such other and further order, decree and judgment as may be just and proper in the premises.

J. C. PINNIX,
Solicitors for the Martin-Alexander
Lumber Company.

Indorsed: No. 85. United States vs. Detroit Timber and Lumber Company et al. Separate Answer of Martin & Alexander Lumber Company. Filed June 3rd, 1902. John M. Somervell, Clerk.

19 In the Circuit Court of the United States for the Western District of Arkansas, Texarkana Division.

United States of America, Complainant,

vs.

Detroit Timber and Lumber Company, a corporation under the laws of the State of Michigan, Martin-Alexander Lumber Company, a corporation under the laws of the

State of Arkansas, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph H. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James W. Patterson, Emma E. Lintz, Bill D. Copeland, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Gus G. Copeland, George T. Colston, Henry Jones, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William V. Waits, Sherman L. Garrison, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary E. Davis, Emma J. Moran, Jim S. Pennington, Jennis V. Pennington, Charles M. Mackey, Carrie M. Hicks and D. D. Brunson, Deft-.

Separate Answer of the Detroit Timber and Lumber Company.

The Detroit Timber and Lumber Company, claiming and insisting that the bill of Complaint herein, does not state facts sufficient to constitute a cause of action, or entitle the plaintiff to the relief demanded, makes this its separate answer thereto.

1. For answer to the first paragraph of said complaint, this defendant admits that this suit was brought by, and under the direction of, the Attorney General of the United States.

2. For answer to the second paragraph of said complaint, this defendant admits that it is a corporation, organized under the laws of the State of Michigan, and that it operated a saw mill at Pike City, Pike County, Arkansas, from the 14th day of January 1901 until the 26th day of April 1902, but states that on the last-mentioned date it sold, transferred and delivered its saw mill to Charles J. Winton and Charles S. Gilbert. It also admits that the Martin Alexander Lumber Company was organized as a corporation, under the laws of the State of Arkansas, on the 20th day of December 1898,
20 and operated saw Mill at Pike City, until January 14th 1901, when it sold all of its property, and all debts due it, to this defendant, and distributed its assets among its shareholders of stock, who were Elmer B. Martin, A. V. Alexander, B. M. Alexander and J. O. Means.

3. For answer to paragraph three of the complaint, this defendant admits that the lands mentioned and described in the said third paragraph of said complaint, were, on and prior to the first day of August 1899, vacant lands of the United States and subject to entry at the land office, at Camden, Arkansas, under the public land laws of the said United States,

and it alleges that said lands were at that time subject to cash entry at double minimum price, under the "Timber and Stone Act" approved August 4 1892.

4. For answer to the fourth paragraph of the complaint, this defendant admits that at the time mentioned therein, the said Elmer B. Martin, was President, Arch V. Alexander, [Secraeaty], and Jim P. Copeland, an employee, of the Martin Alexander Lumber Company, but as to whether or not they conspired together to defraud the said United States of the said lands, and as to whether or not they conspired to obtain the timber growing thereon, for the said Martin-Alexander Lumber Company, as alleged in said paragraph, this defendant has no knowledge or information sufficient to form a belief, and therefore denies the same.

5. For answer to the fifth paragraph of the complaint, this defendant admits that John Scott and the other 43 defendants, whose names follow immediately after that of the said Scott in said fifth paragraph, each made application to enter a separate portion of the said lands, under said acts of Congress, but as to whether or not any of them were induced or procured to do so, by the said Martin, Alexander and Copeland, to effect the fraudulent purpose charged in paragraph four of said complaint, and as to whether or not there was a fraudulent purpose on the part of the said Martin, Alexander and Copeland, and as to whether or not any of the forty four applications were in fact fraudulent, this defendant has no knowledge or information sufficient to form a belief, and therefore denies the same.

6. For answer to the sixth paragraph of the complaint, this defendant admits that the said John H. Scott, and the other 43 defendants, whose names follow immediately after that of the said Scott in the sixth paragraph of said complaint, made application on the several days mentioned therein, and entered and purchased each, under said acts of Congress, at said Land Office, the separate portion of land alleged in said paragraph to have been entered by him or her, and paid therefor cash, at the rate of $2,50 per acre, amounting in all to the sum of $16,006.00 as purchase money, for the plain-
21 tiff, and the sum of $506.00, as fees to said officers, and received the Final Receiver's Receipts, mentioned in said complaint; but as to whether or not the said applications and entries of said defendants were made upon the procurement of the said Martin, Alexander and Copeland, this defendant has no knowledge or information sufficient to form a belief, and therefore denies the same.

7. For answer to the seventh paragraph of the complaint, this defendant states that as to whether or not the said Martin, Alexander and Copeland, before said entries mentioned in paragraph six were made by the said defendants as aforesaid, entered into an agreement with each and every one of said defendant entrymen, to convey to the Martin-Alexander Lumber Company on the issuance of the Receiver's Receipt to each, all of the timber on the lands entered by him or her respectively, by a conveyance, containing the stipulations and agreements in said paragraph set out, it has no knowledge or information sufficient to form a belief, and therefore denies the same.

8. For answer to the eighth paragraph of the complaint, this defendant states that as to whether or not, prior to the making of said entries, it was agreed by and between said Martin, Alexander and Copeland, and each said entrymen, that the said Martin-Alexander Lumber Company should pay all expenses of said entries, and should pay the purchase price of the lands, it has no knowledge or information sufficient to form a belief and therefore denies the same. As to whether or not the said Martin, Alexander and Copeland transported said entrymen from their homes to Camden Arkansas, to make said entries and proofs thereon, and as to whether or not they paid the railroad fares, hotel bills, fees, cost of publication and the purchase price of said lands, or any part thereof, as alleged in paragraph eight, this defendant has no knowledge or information sufficient to form a belief, and therefore denies the same.

9. For answer to the ninth paragraph of the complaint, this defendant denies that after said cash entries were made, and after the said purchase money and land office fees had been paid, as required by law, and after the Receiver's receipts, in said paragraph mentioned, had been issued to said entrymen, each of them, except Seborn Z. Moran, Emma J. Moran and Bill Dorsey, executed what is commonly called a timber contract, to the said Martin-Alexander Lumber Company, conveying to that Company the timber growing on the lands, entered by him or her respectively; but it admits that said entrymen executed timber contracts to the said Martin-Alexander Lumber Company, except the said Seborn
22 Z. Moran, Emma J. Moran, Bill Dorsey, Henry M. Lintz and Emma E. Lintz. As to whether or not the said Martin, Alexander and Copeland induced and procured each of said entrymen to make a false or fraudulent affidavit, before the officers of the Land Office, to the effect that he or she did not apply to purchase the land, described in his or her said affidavit on speculation, but in good faith to appropriate it

to his or her own exclusive use and benefit, and that he or she had not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title he or she might acquire from the United States, should inure in whole or in part to the benefit of any person, except the said applicant, and as to whether or not the affidavit made by each of said entrymen, was false and fraudulent, this defendant has no knowledge or information sufficient to form a belief and therefore denies the same. And as to whether or not the said Martin, Alexander and Copeland procured the witnesses for each [entrymen] to make the proof, required by law, and as to whether or not the proof made was false and fraudulent, this defendant has no knowledge or information sufficient to form a belief and therefore denies the same.

10. For answer to the tenth paragraph of the complaint, this defendant says that it is informed and believes, and therefore admits, that on the several days mentioned in said paragraph, the plaintiff, through the proper officers, pursuant to the said Final Receipts, and in consideration of the payment of the said sum, $16,006.00. of purchase money and the said $506.00 of fees, gave and granted to each of the said defendants, named in said paragraph ten, his or her heirs and assigns, by patent, the lands entered and purchased by each, as alleged, but as to whether or not, in so doing, the plaintiff or the officers relied upon any false or fraudulent applications, or upon any false or fraudulent testimony, and as to whether or not there was any fraud practiced by the said Martin, Alexander and Copeland and the said entrymen, to obtain said patents, it has no knowledge or information sufficient to form a belief and therefore denies the same.

11. For answer to paragraph eleven of the complaint, this defendant admits that on the 14th day of January 1901, the Martin-Alexander Lumber Company sold, assigned and transferred its entire property, and all debts due it, to the Detroit Timber and Lumber Company, and that by said sale, this defendant became the owner of all the subsisting timber contracts and leases for timber on said lands, theretofore made with, and held by, the said Martin-Alexander Lumber Company, and by reason thereof acquired the title to such timber as was then standing on said lands covered by said con-

23 tracts, But

the plaintiff that there was such irregularity, illegality and fraud. Therefore this defendant insists that it was an innocent bona fide purchaser of said timber, for a valuable consideration, without notice of any illegality or fraud, if any

ever existed, and that it would be contrary to law and equity to sustain this action.

12. For answer to the twelfth paragraph of the complaint herein, this defendant admits that after it made the said purchase of said property from the said Martin-Alexander Lumber Company, it obtained, by purchase, a deed from each of the twenty five entrymen mentioned in said paragraph, and thereby acquired the legal title to the lands entered by, and patented to, said twenty five defendants, for a valuable consideration. And this defendant alleges that all of said purchases were made, and the deeds from said parties to said lands executed to it during the months of April and May 1902, long after the patents of the said United States had been issued and delivered to said defendants, except in the case of Jim S. Pennington and Jennie V. Pannington, whose patents did not issue until after [thier] deeds had been executed—and long before this defendant had any notice of any irregularity, illegality or fraud, if any ever existed, and before it had any notice whatever of the contention of the plaintiff that said entries were irregular, illegal or fraudulent. The said purchases were made and the said deeds executed to it, conveying to it in fee simple the following described lands, on the following named days, and in consideration of the following named sums;

From Robbie J. Hughes, it purchased the North half of the Southwest quarter of section 2, and the Northeast quarter of the Southeast quarter of Section 3 Township, 7 South, Range 25 West. 120 acres, on the 4th day of April 1901, for the sum of Three Hundred and fifty-two dollars and twenty-five cents ($352.25)

From Rosa L. Anderson, it purchased the South east quarter of the South east quarter of Section 27, and the South west quarter of the South west quarter, of Section 26, Township 6 South, Range 25 West, 80 acres, on the 3rd day of April 1901, for the sum of $267.00.

From William F. Anderson, it purchased the South west quarter of Section 35 Township 6, South, Range 25 West, 160 acres on the 3rd day of April 1901, for the sum of $452.25.

From Bedford F. Patterson, it purchased the North East Quarter of Section 21, Township 6, South, Range 25 West, 160 acres, on the 22nd day of April 1901 for the sum of $452.25.

From Emmett S. Keebaugh, it purchased the South west quarter of Section 21, Township 6 South, Range 25 West, on the 17th day of April, for the sum of $452.25.

24 it denies that before and at the time of such sale, assignment and transfer, it had full and complete knowl-

edge, or any knowledge whatever, of all the fraudulent acts of the said Martin, Alexander and Copeland in procuring said entries to be made, if any such had been committed as alleged in said complaint. And it also denies that before and at the time of such sale, assignment and transfer, it had full and complete knowledge, or any knowledge whatever, of the fraudulent agreements between the said Martin, Alexander and Copeland and the said entrymen, if any such had been made as alleged in said complaint. And it also denies that it had full and complete knowledge, or any knowledge whatever, that the affidavit of each and every one of said entrymen, in making said entries, was false, if they were false. And it also denies that it had full and complete knowledge, or any knowledge whatever, that said entries had been made for the use and benefit of the said Martin-Alexander Lumber Company, if they were so made, And this defendant states the truth to be that the only stockholders in this company from its organization to the 22nd day of April 1901 were Uriel L. Clark, Ward B. Clark, John G. Ferguson and William L. Kidd; that Uriel L. Clark was the President thereof, Ward B. Clark Vice President and John G. Ferguson, [Secratary], and that they have held these offices respectively in this company from the organization of this company until the present time; that none of said officers, nor the said William L. Kidd, the other director, have ever been in Pike County Arkansas, prior to January 1901; that prior to the said 14th day of January 1901, this defendant and the said Martin-Alexander Lumber Company had no mutual interests, nor had any of the stockholders of said companies any interest in the other, nor had they prior to said date had any business relations except the purchase of a small amount of lumber by this company from the said Martin-Alexander Company; that on said 14th day of January 1901, it purchased from the Martin-Alexander Lumber Co. all of its real and personal property, and debts due it, including the timber on the lands in question, in good faith, for the consideration of sixty thousand [dillars] ($60,000.00); that said purchase of said property, and the [pay] of the purchase price therefor, were made in good faith and without any fraud or intent on the part of this defendant to defraud the said plaintiff, and without any knowledge, information or belief that the said lands or any part of them, had been irregularly, illegally or fraudulently entered and purchased, as alleged in the said complaint, if they had been so entered and purchased. And this defendant alleges that all of the patents to said entrymen had been issued long before it had any notice of any the claim of

25 From Chas. W. Fuller, it purchased the North East quarter of Section 20, Township 6 South, Range 25 West, 160 acres, on the 1st day of April 1901, for the sum of $452.25.

From Henry P. Hughes, it purchased the North West quarter of Section 21, Township 6, South, Range 25 West, 160 acres, on the 4th day of April 1901, for the sum of $452.25.

From Stephen A. Fuller, it purchased the North West quarter of [Srction] 22, Township, 6 South, Range 25 West, 160 acres, on the 26th day of April 1901, for the sum of $452.25.

From Alvin Pry, it purchased the South half of the South West quarter of Section 14, Township 6 South, Range 25 west, 80 acres, on the 9th day of May 1901, for the sum of $10.00.

From George W. Cooper, it purchased the west half of the North east quarter, and the west half of the South east quarter of Section 22, Township 6, South, Range 25 West, 160 acres, for the sum of $452.25.

From Ezekiel Y. Fuller, it purchased the North half of the South west quarter and the Southeast quarter of the South west quarter of Section 22, and the North east quarter of the North west quarter of section 27, Township 6 South, Range 25 west, 160 acres, on the 13th day of April 1901 for the sum of $452.25.

From Willis Cooper, it purchased the East half of South east quarter and the South west quarter of the North east quarter of section 22, and the North east quarter of the North east quarter of section 27, all in township, 6, South, Range 25 west, 160 acres, on the 6th of April 1901 for the sum of $452.25.

From Thomas Roberts, it purchased the west half of the South east quarter, and the south east quarter of the south east quarter of section 15, Township, 6, South, Range 15 west, 120 acres, on the 13tg day of April 1901 for the sum of $352.25.

From Mittie C. Roberts, it purchased the South west quarter of section 15, Township, 6 South, Range 25 west, 160 acres, on the 13th day of April 1901 for the sum of $452.25.

From Lawrence C. Horne, it purchased the North east quarter of section 11, Township 6 South, Range 25 west, 160 acres, on the 3rd day of April 1901, 160 acres, for the sum of $425.25.

From Chas. W. Davis, it purchased, the South east quarter of Section 26, Township 6 South, Range 25 west, 160 acres, on the 24th day of May 1901, for the sum of $452.25.

From Mary E. Davis, it purchased, the South west quarter of Section 25, Township 6 South, Range 25 west, 160
26 acres, on the 24th day of May 1901, for the sum of $452.25.

From Jim S. Pennington, it purchased the South east quarter of Section 20, Township 6 South, Range 25 west, 160 acres, on the 1st day of April 1901, for the sum of $452.25.

From Jennie V. Pennington, it purchased, the North east quarter of the South east quarter of Section 21 Township 6 South, Range 25 west, 40 acres, on the 1st day of April 1901 for the sum of $133.50.

From Chas. M. Mackey, it purchased the North half of the North east quarter and the North half of the North west quarter of section 231 all in township 7 south, of range 25 west, 160 acres, on the 17th day of September 1901 for the sum of $452.25.

From Carrie M. Hicks, it purchased the south west quarter of the south west quarter of section 34, Township 6 south of Range 25 west, 40 acres, on the 1st day of April 1901 for the sum of $133.50.

And this defendant states that on the 8th day of April 1901, long after the patent had been issued to Seborn Z. Moran, he sold and conveyed the East Half of the North West quarter and the South west quarter of the North west quarter of section 25, and the South east quarter of the North east quarter of section 26, Township 6 South, of Range 25 west to D. D. Brunson; that on the same day, long after the patent had been issued to Emma J. Moran, she sold and conveyed the North east quarter [quarter] of section 25, in Township 6 south of Range 25 west to D. D. Brunson, and that on the 9th day of April 1901 and long after the patent had issued to Bill Dorsey, he sold and conveyed the South East Quarter of Section 25, Township 6 South of Range 25 west, to the said D. D. Brunson, and that on the 22nd day of April 1901, the said D. D. Brunson, sold and conveyed all of the said lands, acquired by him, from the said Seborn Z. Moran, and Emma J. Moran, and Bill Dorsey, to this defendant, the Detroit Timber and Lumber Company.

And this defendant further states, that on the 28th day of March 1901, long after the patent had issued to Henry M. Lintz, he sold and conveyed to it, all the timber and trees growing on the Northwest quarter of the North east quarter, the North half of the [of the] North west quarter and the South west quarter of the North west quarter of section 12, in Township 7 South, of Range 25 west, 160 acres, for the value of $400.00.; that on the 27th day of March 1901, long after the patent had issued to Emma E. Lintz, she sold and conveyed to it, all of the timber and trees growing on the South half of the North east quarter of section 2, Township 7 South
27 of Range 25 west 80 acres for the sum of $226.90; and this defendant says that the said purchases of land and timber, mentioned in this paragraph, and said payments therefor, were made in perfect good faith for a valuable consideration, and without any knowledge or information or belief that

the said lands, or any part of them, had been irregularly, illegally or fraudulently entered and purchased, if they had been, as alleged in the said complaint.

Therefore it insists that it was an innocent bona fide purchaser of said lands and timber, so conveyed to it by said deeds and contracts from said parties mentioned in this paragraph, for a valuable consideration, without notice of any irregularity, illegality or fraud, if any exists, and that it would be contrary to law and equity to sustain this action against it as to the lands described in this paragraph.

13. For answer to the thirteenth paragraph of the complaint herein, this defendant denies that it and the said Martin-Alexander Lumber Company have cut and removed and appropriated to their own use, from the timber growing on said lands, lumber of the value of $60,000.00, and it also denies that it is now cutting the timber thereon since December 23, 1901. This defendant admits that under, and by virtue of its ownership, right and authority, secured by its said purchase from the said Martin-Alexander Lumber Company, of the said contracts made by it, with the said John H. Scott, Rob G. Gregory, Martha Gregory, Bill C. Copeland, Emma Winslow, J. E. Patterson, and Gus G. Copeland, and contracts made with this defendant by the said Henry M. Lintz and Emma E. Lintz, and the said deed to it from the said Chas. M. Mackey, and long after the patents [has] issued to the said parties, it did cut, remove and appropriate to its own use three million eight hundred and forty thousand three hundred and eighteen feet of the timber on the following of said lands to-wit: The east half of the Southeast quarter and the South half of the South half of the North east quarter of Section 1; 35 acres of the South half of the North east quarter of section 2; the west half of the North west quarter of the North east quarter; eight acres of South half of the South east quarter of the North west quarter; the North east quarter of the North west quarter; the east half of the South east quarter; the South west quarter of the South east quarter, and the South east quarter of the South west [—] of section 12; the Southwest quarter of section 14; the south east quarter of section 15; the North half of the North east quarter, the North west quarter and the north half of the south west quarter of section 23, Township 7 South, Range 25 west, and it says that said timber was worth the sum of one thousand nine hundred and twenty dollars and fifteen cents. And it states that there are now lying upon said
28 lands about one hundred and twenty-five thousand feet of Yellow Pine logs, board measure, about eighty thousand feet of which were cut by it from said lands in sections one, two and twelve, and worth about Four Hundred dollars;

that said logs if not removed and manufactured will soon become worm eaten, sap stained and blued, and worthless for manufacturing purposes; that in Pike County there is no other value to them. And it states that the timber on the south half of section 13; the [esat] half of the North east quarter; the north east quarter of the south east quarter and the north west quarter of the north west quarter of section 24, in township 7 south of range 25 west, and the [esat] half of the north east quarter; the north west quarter of the north west quarter and the south half of the south west quarter of section 17; the south half of section 18; the north west quarter and the west half of the north east quarter of section 19 in township 7 south of range 24, west, except two hundred and ninety-two thousand, seven hundred and seventy-four feet, had been cut prior to the sale from the Martin-Alexander Lumber Company to the Detroit Timber and Lumber Company, and this defendant is informed and believes that it was cut, used and appropriated by the said Martin-Alexander Lumber Company, but it has no knowledge or information as to the amount thereof. This defendant admits that by virtue of its ownership right and authority, secured by its purchase from the said Martin-Alexander Lumber Company, of said contracts made by it, with Henry Jones, Caroline H. Means, and J. O. Means, long after patents had issued to them, it cut, removed and appropriated to its own use, two hundred and ninety-two thousand, seven hundred and seventy-four feet, of the remaining timber, growing on the South west quarter, the North half of the South east quarter, and the south west quarter of the south east quarter of section 13; and the North west quarter of the north west quarter of section 24, in township 7 south of range 25 west, and the east half of the southwest quarter and the west half of the north east quarter of section 19, in township 7 south of range 24 west, and that said timber was of the value of one hundred and forty-six dollars and fifty cents. This defendant admits that the lands in controversy are valuable chiefly for the timber growing thereon, but it denies that if [—] is not restrained from further cutting of said timber, from said lands, upon which the timber is still standing and growing, that great and irreparable injury will be done to complainant, and it insists that if the injunction issued herein is not modified so as to release the said logs, great injury will be done this defendant. This defendant further states that it has sold all of its property situated in Pike County, Arkansas, partly for cash and partly on a credit of one and two years, [axcept] the lands involved in this suit, to the said
29 Charles S. Gilbert and Charles J. Winton, who have agreed to also purchase said lands if its title thereto is held by the courts to be valid, but they have contracted with

this defendant to cut no timber from said lands pending this suit.

14. For answer to the fourteenth paragraph of the complaint herein, this defendant denies that all, or any, of the said timber contracts and leases, deeds and patents are clouds on the title of the United States to said lands, and it alleges that said complainant has no title to any of said lands, and it insists that as the United States received and has retained, for from two to three years, the purchase money for said lands, aggregating the sum of $16,006.00, that it is contrary to equity and good conscience to retain said purchase money, and ask to set aside its patents, after the title to said lands, or the timber thereon, has passed to this defendant for a valuable consideration without notice of the claim of the complainant, and so the defendant alleges that it has good and perfect title to all of said lands for which it has deeds and to all of the timber for which it has contracts as aforesaid.

Wherefore, the Detroit Timber and Lumber Company prays that Complainant bill herein be dismissed with cost against the Complainant, and for such other and further order, decree and judgment as may be just and proper in the premises.

THOS. C. McRAE,
READ & McDONOUGH,
Solicitors for the Detroit Timber
and Lumber Company.

Indorsed: United States vs. Detroit Timber and Lumber Co. et al. Separate Answer of Detroit Timber and Lumber Co. Original. Filed May 19 1902. John M. Somervell, Clerk.

* * * * * * * * *

66 In the Circuit Court of the United States for the Western District of Arkansas, Texarkana Division.

United States of America, Complainant,
vs.
Detriot Timber and Lumber Company et al., Defendants.

Amendment to Original Bill.

To the Honorable, the Judges of the Circuit Court of the United States for the Western District of Arkansas, Texarkana Division:

The complainant, United States of America, amends the seventh paragraph of its original bill herein, so that the same shall read as follows, to wit: Your orator further states that before said entries were made by the said defendants as afore-

said, the said Martin, Alexander and Copeland, acting for said Martin-Alexander Lumber Company, entered into an agreement with each and every of said entrymen, that each and every entry made by them respectively, as aforesaid, should be made for the use and benefit of the said Martin-Alexander Lumber Company, and that on the issuance of the said Receiver's Receipt to each of said entrymen, he or she should at once execute to said Martin-Alexander Lumber Company, a conveyance, conveying to it all of the timber and trees standing, growing and being upon the tract of land entered by said entrymen, together with a full and free liberty of entry, & right of way for the said Martin-Alexander Lumber Company, its servants, agents, workmen and teams in, through, over and upon said premises, for the purpose of felling, cutting down, and conveying away the said trees or converting the same into lumber upon said premises, and to erect saw mills and other buildings thereon for that purpose, and to remove the same therefrom, and also to build and construct railways, tramways, and wagon roads over, across and upon said premises, and to maintain the use of the same, and to dig wells, build corrals and keep cattle, mules and [horases] thereon, and to have such privileges for the use of Ninety Nine Years.

And your orator further says that if there was no agreement expressed, or implied as hereinbefore set out in this paragraph, between said Martin-Alexander Lumber Company, or the said Martin-Alexander and Copeland, and each and every of said entrymen; each and every of said entrymen made his or her said entry on speculation, and not in good faith, for the purpose of appropriating the same to his or her own use and benefit, which purpose was well known to said Martin-Alexander Lumber Company, and that said Martin-Alexander Lumber Company aided and assisted each and every of said entrymen in the accomplishment of such purpose, to wit the entry of such lands on speculation.

67 And the said complainant amends the eleventh paragraph of its original bill, herein so that the same shall read as follows to-wit:

Your orator further states that on the 14th day of January 1901, the said Martin-Alexander Lumber Company sold, assigned and transferred to defendant Detroit Timber and Lumber Company, all said timber, contracts and leases for the timber on said lands and that before and at the time of said sale, assignment and transfer, the said Detroit Timber and Lumber Company had full and complete knowledge of all the fraudulent acts of the said Martin-Alexander and Copeland in procuring said entries to be made as hereinbefore alleged,

of the fraudulent agreements between said Martin, Alexander and Copeland and the said entrymen, as hereinbefore alleged, and had full and complete knowledge that the affidavits of each and every of said entrymen in making said entries was false, and that said entries had been made for the use and benefit of the Martin-Alexander Lumber Company, or that they had been made on speculation.

JAMES K. BARNES,
U. S. Attorney W. D. Ark.
F. A. YOUMANS,
Assistant U. S. Attorney W. D. Ark.
Solicitors for Complainant.

Indorsed: No. 85. Circuit Court United States Western District Arkansas, Texarkana Division. United States of America vs. Detroit Timber and Lumber Company, et al. Amendment to Original Bill. Filed April 6th, 1903. John M. Somervell, Clerk.

68 In the U. S. [Court,] Circuit Court, Western Dist, Ark. Texarkana Div.

Government of U. S.
vs.
Detroit Timber & Lumber Co. et al.

Comes the defendant, the Detroit Timber & Lumber Co. and demurs to the amendment to the bill of Complaint filed against it in this cause, and for grounds of demurrer says.

1. That the allegations of the amendment are repugnant to and inconsistent with the allegations of the original bill.

2. That the allegations of the bill as amended are uncertain.

3. That the bill as amended proceeds upon inconsistent and antagonistic states of fact.

THOS. C. McRAE,
READ & McDONOUGH,
ROSE HEMMINGWAY & ROSE.

I W. E. Hemmingway certify that, in my opinion, the above demurrer is well founded in point of law.

W. E. HEMMINGWAY,
Counsel for Demurrant.

U. L. Clark says, upon oath, that he is President of the Detroit Timber and Lumber Co, and that the above demurrer is not interposed for purposes of delay.

U. L. CLARK.

Subscribed and sworn to before me, this 7th day of April 1903.
THOMAS BOLES,
Clerk U. S. Circuit Court.
By Florence Hammersly,
Dep. Clerk.

Indorsed: U. S. vs. Detroit Timber & Lumber Co. Demurrer to Amendment to Bill. Filed in Open Court this 6th April 1903. John M. Somervell, Clerk.

69 In U. S. Circuit Court, Western District of Arkansas Texarkana Division.

U. S.
vs.
Detroit Timber & Lumber Co. et al.

On this day comes the Complainant and files herein, by leave of the court, an amendment to its complaint, and also comes the Detroit Timber & Lumber Co, and files its demurrer to the said amendment, which by consent of counsel is to be considered as filed for each of the defendants. And the cause coming on to be finally heard upon the pleadings, exhibits and proofs, counsel for the respective parties agreed in open court that if the court should be of opinion that the demurrer should be overruled, the allegations of the answers of the said demurrant to the original bill should be considered as extending to the amendment.

W. E. HEMMINGWAY,
F. A. YOUMANS.

Indorsed: U. S. vs. Detroit Tomber & Lumber Co. et al. Stipulations. Filed April 6th, 1903. John M. Somervell, Clerk.

70 In the Circuit Court of the United States for the Texarkana Division of the Western District of Arkansas.

United States of America, Plaintiff,
vs.
Detroit Timber & Lumber Company et al., Defendants.

Stipulation.

It is agreed that the following list shows; 1, the names of the parties who executed deeds to the Detroit Timber & Lumber Company; 2—the dates of said deeds; 3, the consideration recited in each deed; 4, the amount recited in each Timber Deed Contract to have been paid on account of timber conveyed in

said contract; and 5, the amou-t paid by the Detroit Timber & Lumber Company on execution of deed:

Name	Date	Consideration in Deed.	Amount in Contract	Amount paid on execution of deed
Rosa L. Anderson	4/3/01	$267 00	$227 00	$25 00
W. F. Anderson	"	452 00	427 25	25 00
Emmett Keebaugh	4/17/01	452 00	427 25	25 00
B. F. Patterson	4/22/01	452 25	427 25	25 00
Chas. W. Fuller	4/10/01	452 25	427 25	25 00
H. P. Hughes	4/4/01	452 25	427 25	25 00
Robbie J. Hughes	"	352 25	327 25	25 00
Stephen A. Fuller	4/26/01	472 25	427 25	45 00
Alvin Pry	5/09/01	10 00	227 25	10 00
Geo. W. Cooper	4/09/01	452 25	427 25	25 00
Willie Cooper	"	452 25	427 25	25 00
E. Y. Fuller	4/13/01	452 25	427 25	25 00
Thos. Roberts	"	352 25	327 25	25 00
Mittie C. Roberts	"	452 25	427 25	25 00
L. C. Horne	4/3/01	452 25	427 25	25 00
W. F. Waits	4/1/01	452 25	427 25	25 00
Chas. W. Davis	5/24/01	452 25	427 25	25 00
Jim S. Pennington	4/1/01	452 25	427 25	25 00
Mary S. Davis	5/24/01	452 25	427 25	25 00
Jennie V. Pennington	4/1/01	133 50	127 25	6 25
Chas. N. Mackey	9/17/01	452 25	427 25	25 00
Carrie M. Hicks	4/1/01	133 50	127 25	6 25

It is also agreed that Emma Lintz executed a deed 3/27/01 in which the consideration was stated to be $400 00. Her Timber Contract recited that $226 90 had been paid. Her husband Henry M. Lintz executed a deed dated 3/28/01, His timber contract recited that $427 25 had been paid. The amount paid to both of them at the time of the execution of their deeds was $145 35 S. Z. Moran and his wife executed deeds dated 4/8/01, to D. D. Brunson, The amounts charged against them on the books of the Martin-Alexander
71 Lumber Company was $505,75 each; Each of them was paid $75 00 upon the execution of their deeds.

William H. Dorsey also executed a deed to D. D. Brunson, dated 4/9/01. The books of the Martin Alexander Lumber Co. show due from him $425.75. Dorsey was paid $75.00, upon the execution of the deed. On 4/22/01 D. D. Brunson executed deed to Detroit Timber & Lumber Company. The consideration recited in Brunson's deed was, $960.00. He was paid what he had paid Moran & wife and Dorsey and in addition the sum of $15.00.

The originals of the above named deeds were introduced in evidence and all of said deeds were deeds of general warranty, except the deed from D. D. Brunson to the Detroit Timber & Lumber Company.

It is also stipulated and agreed that the defendants introduced, in evidence, the following timber deeds or contracts of date as follows, to-wit:

Name.	Date.
J. H. Scott	4/13/00
Thomas J. Copeland	4/20/00
John H. Wilson	4/12/00
R. C. Gregory	4/13/00
Jim P. Copeland	4/14/00
Martha Gregory	4/12/00
J. O. Means	9/10/00
E. G. Winslow.	10/16/00
Caroline H. Means	9/10/00
Emma Winslow	10/16/00
James F. Patterson	9/10/00
B. D. Copeland	3/ 5/00
Gus G. Copeland	4/27/00
Geo. T. Colston	4/27/00
Henry Jones	4/26/00
S. L. Garrison	6/ 9/00
B. A. Garrison	6/ 9/00, and all other timber

deeds and contracts introduced in this case.

The above timber deeds or contracts each contained a description of the land respectively entered by each of the parties in each case, and were similar in form to a copy of the contract of John H. Scott which is hereto attached.

REED & McDONOUGH,
Solicitors for defendants.
F. A. YOUMANS,
For Complainant.

72 This Agreement Made and entered into this 13th day of April A. D. 1900, by and between J. H. Scott Pike City Ark, party of the first part, hereinafter called the vendor, and Martin & Alexander Lumber Co., Pike County Arkansas, party of the second part, hereinafter called the purchaser, Witnesseth;

First: That the said vendor, in consideration of One Dollar to him in hand paid, and of the covenants and agreements of the said purchaser, hereinafter set forth, has bargained, sold and conveyed unto the said Martin-Alexander Lumber Company, the purchaser aforesaid, all of the timber and trees now standing and growing or being upon a certain tract or par-

cel of land known and described as follows: to wit; North East Quarter of Section One (1) Township Seven (7) South, Range Twenty Five (25) West, in Pike County Arkansas, [situste] in the County of Pike and State of Arkansas, together with full and free liberty of entry and right of way for the said purchaser, its servants, agents, workmen and teams in, through, over and upon said premises, for the purpose of felling, cutting down and carrying away the said trees, or converting the same into lumber upon said premises, and to remove the same therefrom, and also to build and construct railways, tram-ways and wagon roads over, across and upon said premises, and to maintain the use of the same, and to dig wells, build corrals and keep cattle, mules and horses, [ets.], thereon.

Second; In consideration whereof the said purchaser doth, by these presents, promise and agree to pay unto the said vendor, his heirs, executors, [administratotrs] and assigns, the sum of Fifty cents for each and every one thousand feet of lumber, scale measure, contained in the logs or timber which shall be cut by it upon said land.

And it is admitted that the said purchaser has at the date and execution, and delivery hereof, paid on account of such purchase price the sum of four hundred and seven and seventy one hundredths ($407.70), the receipt of which is hereby acknowledged: the balance thereof, should there be any, beyond the amount above stated, and 8c interest per annum on the said four hundred and seven and 70/100 dollars ($407.70) shall be payable in monthly payments at the end of each month as the timber or lumber from time to time is cut out and removed from said premises.

Third; It is mutually agreed between the parties hereto that this contract shall continue in full force until all trees or timber are removed therefrom, with a right on the part of the said purchaser to maintain and operate any railroad [ir] tramway built upon or across said premises by it for the
73 period of ninety nine years (99) from date hereof, and that all other structures placed upon said premises by said purchaser shall remain its sole property and may be removed by it upon the termination of this lease or within one year thereafter.

In Testimony Whereof, the party of the first part has hereunto set his hand and seal, and the part- of the second part has caused these presents to be executed by its president and [attsted] by its secretary under the corporate

seal of said corporation on the day and year [forst] above written.

(signed) JOHN H. SCOTT [Seal]
MARTIN ALEXANDER .UMBER CO.
Attest E. B. Martin, President.
A. V. Alexander
Secretary.

State of Arkansas,
County of Polk—ss.

Be It Remembered, That on this 14th day of April A. D. 1900, personally appeared before me, John H. Scott of said county, the party of the first part named in the foregoing instrument, and acknowledged that he had executed the same for the purpose and consideration therein mentioned and set forth;

In Witness Whereof I have hereunto subscribed my name and affixed my Notarial Seal the day and year above written.

(signed) JIM P. COPELAND,
Notary Public.

My Commission expires Sept. 30th, 1900.

Indorsed: United States vs. Detroit Timber & Lumber Co. Stipulations. Filed April 6th, 1903. John M. Somervell, Clerk.

* * * * * * * * *

81 Jim P. Copeland, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. What is your name? Answer. James P. Copeland, or Jim P. Copeland.

Q. You lived in Pike county during the years 1899, 1900 and 1901? A. Yes, sir.

Q. What was your occupation at that time? A. My occupation has always been that of a farmer.

Judge Read: We are going to introduce his testimony taken before the jury.

Mr. Hemingway: He is the same Jim P. Copeland who testified on the part of the defense in the case of the United States against Martin, et al.

Mr. Youmans: Will you let this statement, which I now hand the witness, (handing witness paper), go as part of his examination in chief, and I will not ask him any questions on that part of it?

It is agreed that the statement of the witness made on the 4th day of October, 1901, and sworn to before Charles A. M. Schlierholz, Special Examiner of the General Land Office, and introduced in the case of Elmer B. Martin and A. V. Alexander and Jim P. Copeland, be taken as evidence in this case on the part of the Government, subject to objections as to relevancy and competency; and the same is filed as a part of this testimony, and is as follows:

82 "State of Arkansas,
"County of Pike—ss.

"On this 4th day of October, 1901, before me personally appeared Jim P. Copeland, who being duly sworn, on oath deposes and says:

"I am 64 years old, reside one mile south of Pike City, Arkansas, and my Post Office address is Pike, Arkansas. I was timber estimator for the Martin-Alexander Lumber Company, of Pike City, Arkansas, between the 1st day of January, 1899, and the 1st day of February, 1901, and also was employed by the company in the capacity of surveyor in surveying their railroad and timber lands. I am well acquainted with John H. Scott, who made an entry under the Stone and Timber act; I do not remember if he was in the employ of the company at the time of the entry, but remember that he worked for the company, but do not know if it was prior or after the entry was made. I am also well acquainted with the following named parties, all of whom made entries under the Stone and Timber act, to-wit: Thos. J. Clements, John H. Wilson, Robertson C. Gregory, Joseph O. Means, Archibald G. Winslow, Jas. F. Patterson, Henry M. Lintz, Wm. F. Anderson, George T. Colston, Harry Jones, Emmett S. Keebough, Chas. W. Fuller, Henry P. Hughes, Alvin Pry, Geo. W. Cooper, Ezekiel Y. Fuller, Thos. Roberts, Lawrence C. Horne, Wm. F. Waits, Sherman L. Garrison, Seborn Z. Moran, Chas. W. Davis, Bill Dorsey, Jim S. Pennington and Chas. M. Mackey. All these parties were employed by the Martin-Alexander Company at the time they made their respective entries under the Timber and Stone act. I am also acquainted with the following named women: Robbie J. Hughes, she is the wife of Henry P. Hughes, an employe of the company; Caroline H. Means, who is the wife of Joseph O. Means, an employe of the company; Emma Winslow, the wife of Archibald G. Winslow, an employe of the
83 company; Emma E. Lintz, wife of Henry M. Lintz, an employe of the company; Rosa L. Anderson, the wife of Wm. F. Anderson; an employe of the company; Willie Cooper, the wife of George W. Cooper, an employe of the company; Mittie C. Roberts, the wife of Thos. Roberts, an employe of the

company; Barbery A. Garrison, the wife of Sherman L. Garrison, an employe of the company; Mary E. Davis, the wife of Chas. W. David, of whom I am not [positife] that he was in the regular employ of the company and who only worked occasionally for the company; Emma Moran, who is the wife of Seborn Z. Moran, who was in the employ of the company; Jennie V. Pennington, the wife of Jim V. Pennington, who was in the employ of the company, and Carrie M. Hicks, the sister of Jennie V. Pennington; all of these named women made entries under the Timber and Stone act. I am also acquainted with Martha Gregory, the wife of Robertson C. Gregory, an employe of the company, and she also made an entry under the Timber and Stone act. I am also acquainted with Bill D. Copeland and Gus G. Copeland; they are my sons; both of them made entries under the Stone and Timber act while I was in the employ of the company. I am also acquainted with Stephen A. Fuller, who also made an entry under the Timber and Stone act; I do not know if he worked for the company at the time of the entry, but he has worked for the company since that time. I also made an entry under the Timber and Stone act, while in the employ of the company. I have no recollection about the entry of Bedford F. Patterson. I am well acquainted with the pine timber lands in this locality and knew the location of the Government lands in this section of the country. In the early part of 1899, while in the employ of the Martin-Alexander Lumber Company, E. B. Martin, one of the firm, now living in Chicago, Illinois, spoke to me
84 about the Public lands and asked me, if there was any public lands in the county, and after having told him that there were such lands, and having given him the approximate amount of acres, he asked me how it could be procured and I told him that it could be homesteaded, but that the timber could not be cut except for use on the place till the patent was obtained; we then spoke about soldiers' scrips, and I then told him about the Timber and Stone act, and told him about the law and brought the act to the office. In the conversation about the act I told to the mill people, Messrs. Martin and Alexander, that I knew of good and honest people who would take up some land under the act, if they had the money, and they said that they would loan that class of men the money if they would take up the land; I asked them then what security they required, and their answer was that they would only take their individual note, without any security. I then hunted up the parties whose names were mentioned, with the possible exception of Bedford F. Patterson, whom I do not recollect, at various times, and explained the law to them, told them that they would get the money from the Martin-Alexander Lumber Company without security and that the Martin-Alexander Lumber

Company would trust to their honor to pay it; I showed them the land and gave them the description of the same, told them the probable estimate of the timber on the respective tract and told them that the timber on the land at 50 cents per 1000 feet would pay more than the land would cost, and told them that they could sell the land or the timber, after the patents were issued. I did not know anything about the financial condition of Archibald G. Winslow, Harry Jones, Joe Means, John H. Wilson and Emmett S. Keebough, but the remainder of the parties who made these entries were poor men who did
85 not have the money to make the entries. Neither myself nor my sons had the money to make such an entry. I generally went with the parties who had agreed to make the entry to the Land Office at Camden, Arkansas, to make the application; also, as a rule, paid the expenses to Camden and return, as well as the hotel expenses, and paid for the advertisements, but took the receipt from the publisher in the name of the party who applied for the entry. The money which I paid out for such expenses was paid back to me by the Martin-Alexander Lumber Company, and frequently they paid me the money for the expenses and when I returned I made a settlement with them. Whenever I went with the parties at the time of final proof, I generally paid the expenses of the applicants and the witnesses. Whenever I went with a party of applicants to the Camden, Arkansas, Land Office, for final proof, I was furnished the necessary money to pay for the land and the Register's and Receiver's fees, by the Martin-Alexander Lumber Company, and also with notes, made out without signature, for the respective parties, who were to make such proof. The notes called for the amount paid for the land and the fees for the officers of the Land Office. The notes were signed by the parties who made the proof on the day of the proof at Camden, Arkansas. The money for the land was given to the respective parties just prior to the time that they went to the Land Office to make the proof. In no case where these entries were made by these parties mentioned, including myself, was the money paid for the land and fees of the officers, paid out of funds other than out of the money furnished by the Martin-Alexander Lumber Company. None was paid out of the individual funds of the parties making these entries. The Martin-Alexander Lumber Company also paid all the expenses connected with the filings and proofs of these entries, ex-
86 cept in the case of Thos. J. Clements and myself. I was in the employ of the company at the time I made my filing and made my proof and was paid for my time. To my personal knowledge none of the applicants mentioned and who made these entries mentioned, had sufficient money of their own to pay for the land, and I, myself, did not have it. I had

known all the applicants for nine months previous [—] their application, and most of them for a longer time, except Bedford F. Patterson, who, as stated previous, I cannot recollect. At the time these entries were made the Martin-Alexander Lumber Company, of Pike City, Arkansas, were purchasing timber lands and timber in the vicinity of the location of these entries. Martin-Alexander Lumber Company purchased from me the timber on the land I entered under the Timber and Stone act; I gave them a timber contract in place of my note, and I was given back my note by the Martin-Alexander Lumber Company, and the note was cancelled as follows: 'This note is cancelled in consideration of a timber contract on the following described land, (then came the description of the land.)' The contract stated that I was to get the pay for the timber over what it would scale at the rate of 50 cents per 1000 feet, above the face of the note. All of the applicants and entrymen, with the exception of Seborn Z. Moran, Emma J. Moran and Bill Dorsey, made the same kind of contracts as I did with the Martin-Alexander Lumber Company. No cash payment was made by the Martin-Alexander Lumber Co., to the parties who signed the timber contracts; I received none and if any other person received any I never heard of it. The Receiver turned over the receipts to the parties who made the entries. I was at the Land Office when the applications for these entries were made, but was not present at the following dates of final
87 proof, to-wit: April 24th, June 6th, and July 5th, 1900.

I do not know who went with the parties on these dates mentioned. I was in the employ of the Martin-Alexander Lumber Company during the time that I took the applicants for these timber and stone entries out to the respective tracts of land, and was paid for my time by the said Martin-Alexander Lumber Company. These tracts averaged about 5500 feet of merchantable timber per acre. The money for these entries, when I was along, which was in the majority of the cases, was paid to the applicants on the morning of the final proof. None of these entries were sold to the Martin-Alexander Lumber Company. Sometime during last February, the firm of Martin-Alexander Lumber Company was absorbed by the Detroit Timber and Lumber Company, a corporation under the laws of the State of Michigan, as I have been informed. Mr. U. L. Clark, from Detroit, Michigan, is the president of the company. He had no connection with the Martin-Alexander Lumber Company, and I never saw him till last February. I understand that the Detroit Timber and Lumber Company have purchased some of these timber and stone entries, since their organization. They offered to purchase my entry, but have not sold the same. Most of the pine timber has been cut from my entry by the Detroit Timber and Lumber Company. Some timber was also

cut from Gus G. Copeland's entry by the Detroit Timber and Lumber Company. None of these lands entered under the Timber and Stone act are fit for agricultural purposes and were chiefly valuable for its timber, pine and oak. I have never been connected with the Detroit Timber and Lumber Company, and never worked for them. Mr. A. V. Alexander, formerly of the firm of Martin-Alexander Lumber Company, is connected with the Detroit Timber and Lumber Company, and, according to the sign over the office of the company at Pike City,
88 Arkansas, is the secretary of the company, and he is managing the mill property of the company at Pike City, Arkansas. At the times that I was present at the Camden, Arkansas, Land Office, when the final proofs were made, no questions, outside of the written questions, were asked in these proofs.

"JIM P. COPELAND.

"Subscribed and sworn to before me this 4th day of October, 1901, and I certify that the contents of the above were fully made known to the deponent, before signing.

"CHAS. A. M. SCHLIERHOLZ,
"Special Agent G. L. O."

Q. Do you remember when the Martin-Alexander Lumber Company sold out to the Detroit Timber and Lumber Company? A. I remember about the time; yes, sir.

Q. Do you know Mr. Roy McDonald? A. Yes, sir.

Q. Do you know in what capacity—whether or not he was employed for the Detroit Timber and Lumber Company? A. Why, he told me he was, sir.

Q. You know it only from what he said? A. Only from what he said. He came down there and sought my acquaintance, and told me he had been sent there and wished to estimate the timber on the land belonging to the Martin-Alexander Lumber Company.

Defendants object to any conversation between witness and McDonald, or to anything done between witness and McDonald.

Q. Go ahead and state what conversation you had
89 with Mr. McDonald. A. Mr. McDonald approached me in the Post Office the first time. I never saw him before. He asked me if my name was Copeland. He said that he had been sent down there by the Detroit Timber and Lumber Company to reestimate the timber of the Martin-Alexander Lumber Company.

Q. Can you tell about when this was? A. It was the last of January or the first days of February.

Q. Of what year? A. I presume it was 1901. I am not positive. It might have been in the year 1900.

Q. State the conversation. A. That Mr. Alexander had told him that I would go with him and assist him in it, and I did go with him, as well as I remember, ten or eleven, maybe twelve, days, in consummating that work.

Q. What did you estimate the timber—on what lands, in order to make it more definite? The inquiry here is with reference to the lands entered at the land office under this Timber and Stone act. A. We estimated the timber on that land, I know.

Q. You estimated the timber, then, on the forty-four timber and stone entries? A. Yes, sir; every one of them.

Q. For the timber on which the Martin-Alexander Lumber Company held timber contracts? A. Yes, sir. Now, I would like to state further in that connection, if you want the whole truth—

Mr. Hemingway. Just answer his questions, Mr.
90 Copeland.

Q. You say it took you ten or twelve days to make that estimate? A. Yes, sir.

Q. Did you do any other business with Mr. McDonald down there? A. Did I ever have any other business?

Q. Not you personally, but with reference to any alleged business of the Detroit Timber and Lumber Company? A. No, sir; not that I remember.

Q. How long was Mr. McDonald there? A. He was there from that time pretty regularly, I think, until the Detroit Timber and Lumber Company sold out their interest. He might have been absent from there a short part of the time. I think he was there permanently.

Q. Were there any conversations between you and Mr. McDonald with regard to these timber and stone entries, as distinct from any other land? A. Not a word, sir.

Cross-Examination

By Judge Read.

Q. Do I understand you that Mr. McDonald estimated the timber on all the lands that were entered by the Martin-Alexander Lumber Company; he did not confine himself to estimating the timber on these lands? A. Oh, no, sir. He estimated all the timber.

Q. There was no difference, so far as that was concerned, between these timber and stone entries and any other? A. No, sir. I showed him all the land that belonged to the Martin-Alexander Lumber Company, and he and I made an estimate.

Q. Of all the timber that belonged to the Martin-
91 Alexander Lumber Company, regardless of where it was situated and the lands it was on? A. Yes, sir.

Q. To refresh your memory as to when Mr. McDonald was there: was it not in December, 1900, about Christmas day? A. Now, I could not state positively. If I knew the exact date of the consummation of the trade between Mr. Clark and Mr. Martin I could give you about the time of his arrival there, but the date is a little indefinite to me, and I could not state positive.

And further the witness saith not.

92 D. D. Brunson, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Question. Where did you live in 1900 and 1901? Answer. In the year 1900 I lived in Lebanon, Tennessee.

Q. In 1901 where did you live? A. Part of the year 1901 I lived in Pike County, Arkansas.

Q. At Murfreesboro? A. Yes, sir, most of the time.

Q. What was your business during most of that time? A. I was practicing law.

Q. With whom, Mr. Brunson? A. Mr. Pennick, J. C. Pennick.

Q. State whether or not during that time you had professional work in the matter of obtaining deeds from Seborn Z. Moran and Mary Moran and Bill Dorsey? A. I do not hardly know whether you would term it professional work or not. I obtained some deeds from those parties.

Q. Explain that, if you please.

Objection to asking anything that he might have done of a professional character. Objection goes to the entire testimony of the witness on that point.

Q. State what you did. A. Do you mean for me to detail the whole transaction?

Q. Yes, sir. A. As I remember it, in May, sometime about the 10th of May, Mr. Pennick told me that he wanted
93 me to go up to work in the mountains to see some parties, that he had a debt that was placed in the office there to collect on Mr. Moran and his wife and Bill Dorsey; and a few days later he gave me a note and contract and told me to go up there, and I went up there and saw Mr. Moran. I went to his house. I told him what I had come for, that I had come there to get him to sign the note, or, if he would not sign the note, sign the contract, and he refused.

Objected to.

Q. Did you have a similar note and contract for the other two, Mary Moran and Bill Dorsey? A. I am not positive about that, but my recollection is I did.

Q. Did you apply to the other two also? A. I presume I did. The most of my conversation that I had with reference to the contract and note was in the presence of Mr. Moran's wife, and I did not remember asking her to sign the note because he refused, and I didn't think it was any use to ask her.

Q. Did you ask Bill Dorsey? A. No, sir; I didn't go to see him at that time.

Q. What was the next thing done with reference to that? A. There was nothing more done with reference to the papers and the note and contract.

Q. Then, with reference to the land? A. Later on, somewhere about the 1st of April, I went up there and bought that land.

Q. From whom? A. Mr. Moran and his wife, and Bill Dorsey.

Q. You say you then bought the land? A. Yes, sir.

Q. By what kind of deeds? A. Quit-claim deeds.

94 Q. From whom did you get the money to make the purchase? A. I did not apply to any person for the money.

Q. From whom did you get it, if you got it from anybody? A. Mr. Pennick handed me the money to make the purchase.

Q. How much? A. I don't remember how much he gave me. My recollection is he gave me two hundred and twenty-five dollars.

Q. How much did you give each individual? A. Seventy-five dollars each.

Q. And you secured quit-claim deeds? A. Yes, sir.

Q. What did you do with those deeds? A. I brought them back and I kept them in the office for some little time, I don't remember just how long, and we talked the matter over—

Q. Who? A. Mr. Pennick and I; and later I sold the land to the Detroit Timber and Lumber Company.

Q. How did you sell it? A. I gave them a deed to it.

Q. A warranty? A. A quit-claim.

Q. What did you sell it to them for? A. I think the consideration expressed in the deed, as well as I remember, is nine hundred and ninety-nine dollars.

Q. That was all the land included in that debt? A. Yes, sir; that is my recollection.

Q. How much money did you actually get for that? A. I think, my recollection is, I got twenty-five dollars.

95 Q. I will ask you whether that was the real consideration for the land, or, was it for services? A. There was no—I don't hardly know how to answer that question.

Q. You know in what capacity you were acting. A. I will just state this, that there was no contract—there never was any contract between the Detroit Timber Company and myself with reference to buying that land.

Q. I did not ask you that question. I asked you whether the twenty-five dollars that you received was received as a consideration for the land, or, was it received in payment for services rendered? A. I considered it—I don't know—I don't believe I can give a definite answer to that; but I considered that was pay for my services. That is the way I considered it.

Q. To whom did you deliver, if you delivered to any one, the quit-claim deeds you received from these parties? A. I delivered them to Mr. Alexander.

Q. To whom did you deliver the Detroit Timber and Lumber Company deed you executed? A. Which do you speak about?

Q. First I spoke about the three quit-claim deeds, Mary Moran, Seborn Z. Moran and Bill Dorsey. A. I kept them.

Q. Have you still got them? A. No, sir.

Q. What did you do with them finally? A. I turned them over to Mr. Alexander.

96 Q. To whom did you deliver the quit-claim deed that you executed? A. I delivered that to Mr. Alexander.

Q. Mr. A. V. Alexander? A. A. V. Alexander.

Q. For whom was Mr. Alexander acting at that time, if you know? A. I don't know that I could testify positively that I know. In my mind I know, but to positively know, I don't think that I could testify that I know. It was my understanding—

Objected to.

And further the witness saith not.

Mr. Youmans: Are signatures waived in all these cases?

Mr. Read: Yes, sir.

97 Elmer B. Martin, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Question. Please state your name, age and place of residence. Answer. My name is E. B. Martin; I am thirty-five years old; I live in Chicago, Illinois.

Q. What business were you engaged in during the years

1899, 1900 and 1901? A. During all those years I was engaged in different businesses.

Q. In Pike County, Arkansas, to make it more specific A. During a portion of the year 1898, all of the year 1899. and a portion of the year 1901, I was interested in the Martin-Alexander Lumber Company, in Pike City, Arkansas—a portion of 1898, all of 1899, 1900, and a portion of 1901.

Q. What is your business? A. The Martin-Alexander Lumber Company?

Q. In regard to being in the manufacture of lumber? A. Yes, sir; saw mill plant.

Q. It has appeared in testimony that you, the Martin-Alexander Lumber Company, let a number of individuals have money, and took their notes for it, the money being the purchase price of lands entered by them at the Land Office at Camden. What became of those notes? A. They were all cancelled and destroyed, as far as I know—that is, those that I know of. I know they were all cancelled, so far as I know what became of them. They were destroyed.

Q. When were they destroyed? A. They were de-
98 stroyed at different times. That is as near as I can tell you when they were destroyed.

Q. What was the object of keeping them at all, if they were cancelled? A. To make entries—as a memorandum.

Q. After they had served their purpose in making entries they were destroyed: do I understand you to say that? A. No, I don't say that. They were kept as memorandums for the purpose of making entries, and were then destroyed, so far as I know.

Q. Where were they kept? A. I do not remember.

Q. What did you do with that plant—you were president of that company, weren't you? A. President and treasurer.

Q. What was done with that plant? A. I do not know.

Q. So far as your interests in it was concerned, what did you do? A. What do you mean by the word "interest"?

Q. You had an interest in there, didn't you? A. I owned stock in the company.

Q. What did you do with that? A. I sold the stock.

Q. To whom? A. To the Detroit Timber & Lumber Company, and Mr. U. L. Clark.

Q. When did you do this? A. On January 14th, 1901.

Q. What did you do with the books of the company,
99 if anything,—of the Martin-Alexander Lumber Company—books of account, books of original entry—what disposition, if any, did you make of them? A. After I sold out my stock?

Q. Yes, sir. A. I had nothing whatever to do with them.

Q. Did you do anything, before you sold out, with the books? A. When I had stock in the company they were there in the business, as they always were.

Q. Then, I understand you that the books were left there, so far as you know, just as they were while the business was running under your presidency? A. When I sold out my stock?

Q. Yes, sir. A. I sold on January 14th—at that time, yes.

Q. You had nothing more to do with the books after the sale of your stock? A. No, sir.

Q. And you left all the books that were in use during the time of your [presidence] right there in the office, at the time of your sale? A. I did not leave them. I had nothing to do with them.

Q. They were there, weren't they? A. At the time I sold out?

Q. Yes. A. At the time I sold my stock I suppose the books were in possession of the company.

Q. You never took them away yourself? A. No, sir.

Q. Do you know of anybody else taking them away? A. No, sir.

100 Q. You say you do not know where any of those books are now, with the exception of those that have been produced here by Mr. Clark? A. I do not.

Q. Do you know where the minute book of the Martin-Alexander Lumber Company is, in which was recorded the proceedings of the stockholders' and directors' meetings? A. While I was stockholder?

Q. When you were president and stockholder. A. I do not know. You ask me if I know where they are now?

Q. Yes, sir. A. I do not.

Q. The question is: I ask you if you personally made any disposition of those books, took them away, or whether they were left there. A. I did not take them away.

Q. Were they left there, so far as you know? A. I did not have anything to do with them.

Q. Were they left there, so far as you know? A. Yes, sir; they were in the possession of the company, so far as I know.

Q. At Pike City, Arkansas? A. Yes, sir. I want to make one correction in the first statement I made with reference to the Martin-Alexander Lumber Company. It was incorporated, I believe, in the main office at Little Rock, instead of Pike City.

Q. The records of incorporation will show, will they not? A. Yes, sir.

Q. What I want to get at is just a statement as to
101 whether those books were taken away, to your knowledge? A. No, sir.

Q. From the office at Little Rock, or at Pike City? A. No, sir.

Q. Or anywhere? A. No, sir.

Q. So far as you know, then, they were left there at Pike City, at the time you sold your stock? A. Yes, sir.

Q. Did you resign as president at the time you sold your stock? A. Yes, sir.

Q. And as a director also? A. Yes, sir.

Q. Who were the directors of that corporation at that time, at the time you resigned? A. My recollection is, A. V. Alexander, J. O. Means, E. B. Martin. That is my recollection.

Q. Where was Mr. Means at that time? A. At Pike City.

Q. At the time of your sale— A. Yes, sir.

Q. Of the stock? A. Yes, sir.

Q. All that you did was to sell your stock in the concern? A. I sold my stock in the Martin-Alexander Lumber Company.

Q. Do you know of the sale of any other stock of any other stockholder? A. Mr. Means sold his stock.

Q. How many shares did he have? A. One share.

102 Q. And Mr. Alexander, did he sell his stock? A. Not when I sold mine.

Q. Did he sell it afterwards? A. I do not know.

Q. Of your own knowledge, now? A. Certainly. That is the way I am answering all those questions.

Q. Do you know whether Mr. Alexander sold his stock? A. I do not.

Q. Do you know whether Mrs. Alexander sold her stock? A. I do not.

Q. You know nothing, then, about the affairs—the conduct of the affairs—of that corporation, after you sold your stock? Is that correct? A. I do not.

Q. It appears in evidence that a number of timber contracts were executed to the Martin-Alexander Lumber Company. Do you remember the number of those now? A. The contract while—

Q. I refer, now, simply to the contracts executed on timber, or timber and stone, entries. A. While I was stockholder in the company?

Q. Yes, sir. A. I do not.

Q. Will the books of the concern show? A. I do not know.

Q. You do not know, then, whether they were entered on the books or not? A. All timber contracts that were made

while I was a stockholder I know were entered on the
103 books.

Q. Do you remember of a timber contract made by John H. Scott? A. I think I recall one. I could not swear to it.

Q. Thomas J. Clements? A. Same answer.

Q. Jim P. Copeland? A. Same answer.

Q. You mean you think there was one? A. As far as I recollect, timber contracts were entered on the books of the Martin-Alexander Lumber Company for those people while I was a stockholder in the company—as far as I can recall.

Q. That applies to John H. Scott, Thomas J. Clements, James P. Copeland, Martha Gregory, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Emma E. Lintz, Bill D. Copeland, Henry Lintz, Rosa L. Anderson, William F. Anderson, Gus G. Copeland, George T. Colston, Bedford F. Patterson— A. Wait a minute! Two Pattersons?

Q. One is James F. Patterson and the other is Bedford. A. It is man and wife, is it?

Q. No, sir. A. I do not recollect that I ever knew but one Patterson.

Q. You mean to say that you do not recall Bedford F. Patterson? A. I could not say.

Q. Do you recall Emmett S. Keebaugh? A. The same answer as to the first.

Q. So far as you can recall now, a contract was
104 made with those enumerated, except Bedford F. Patterson or the other Patterson? A. Yes, sir.

Q. Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willie Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Sherman L. Garrison, Barbara Garrison— A. That is Garrison's wife, is it?

Q. Yes, sir. Charles W. Davis, Mary E. Davis, Jim S. Pennington, Jennie V. Pennington, Charles M. Mackey and Carrie M. Hicks. A. As you called those names there I tried to think of the people, which I did.

Q. What is your answer as to whether or not contracts were made with those people for timber during the time that you were president of the concern? A. I answer that the same as I did before.

Q. You mean to say by that, according to the best of your recollection contracts were made? A. I could not make an oath to that—simply from recollection with reference to this land. Any contracts that were made were entered upon the books.

Q. Then the books will show? A. Yes, sir.

Q. Where were those contracts made? A. I do not remember.

Q. State whether or not you held any receiver's receipts for lands entered under the Timber and Stone act. A. Personally?

Q. No, sir; I mean as president. A. Me, personally, as president?

105 Q. I mean, did the Martin-Alexander Lumber Company hold any receiver's receipts for lands entered under the Timber and Stone act? A. What do you mean by "hold"?

Q. Did they have any in their possession? A. That is the question: instead of "holding" them, did they have them "in their possession"?

Q. Yes, sir. A. Not that I know of.

Q. Do you know of their having any receiver's receipts at all, for lands entered under the Timber and Stone act? A. Of their having them?

Q. Yes, sir. A. What do you mean by "having"?

Q. If you do not understand the question, I will ask it again? A. I cannot answer it.

Q. You do not know whether the Martin-Alexander Lumber Company had the receiver's receipt of John H. Scott? A. I do not. My recollection is, no.

Q. Do you know if they had the receiver's receipt of Thomas J. Clements? A. Same answer that I gave before.

Q. Do you know if the company ever had the receiver's receipt issued to Jim P. Copeland? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to John H. Wilson? A. Same answer.

106 Q. Do you know if the company had the receiver's receipt issued to Robbie J. Hughes? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Robertson C. Gregory? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Martha Gregory? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Joseph O. Means? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Archibald G. Winslow? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Caroline H. Means? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Emma Winslow? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to James F. Patterson? A. Same answer, with the exception noted. I do not remember about those Pattersons.

Q. Do you know if the company ever had the receiver's receipt issued to Emma E. Lintz? A. Same answer.

Q. Do you know if the company ever had the re-
107 ceiver's receipt issued to Bill D. Copeland? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Henry M. Lintz? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Rosa L. Anderson? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to to William F. Anderson? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Gus G. Copeland? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to George T. Colston? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Henry Jones? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Bedford F. Patterson? A. Same answer, with the exception noted. I do not remember about those Pattersons.

Q. I ask you if you ever had receiver's receipts issued to them. A. I cannot recall the Pattersons. Same answer.

Q. Do you know if the company ever had any receiver's receipt issued to Emmett S. Keebaugh? A. Same answer.

108 Q. Do you know if the company ever had the receiver's receipt issued to Charles W. Fuller? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Henry P. Hughes? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Alvin Pry? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to George W. Cooper? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Ezekiel Y. Fuller? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Willie Cooper? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Thomas Roberts? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Mittie C. Roberts? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Lawrence C. Horne? A. Same answer.

Q. Do you know if the company ever had the re-
109 ceiver's receipt issued to William F. Waits? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Sherman L. Garrison? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Barbara A. Garrison? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Charles W. Davis. A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Mary E. Davis? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Jim S. Pennington? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Jennie V. Pennington? A. Same answer.

Q. Do you know if the company ever had the receiver's receipt issued to Carrie M. Hicks? A. Same answer.

Q. The same answer applies to each one of the names I have asked you about? A. Yes, sir.

Q. Do you know whether the company had the receiver's receipts of each one of those? A. My recollection is, no.

110 Q. Did you have them personally? A. No, sir.

Q. Did Mr. Alexander have them or any of them? A. I do not know.

Q. Did anybody have them that you know of?

Mr. Hemingway. Do you mean for the company?

Mr. Youmans. The trouble of it is I mean for the company. Mr. Martin seems to make some distinction, and I am trying to cover all the grounds.

Q. Do you know of anybody having them? A. From my knowledge?

Q. Yes, sir. A. No, sir.

Q. Do you know of their existence at all? A. Do I know what receiver's certificates were issued to those people for those lands?

Q. I mean, anything about these particular instances. Do you know of the existence of receiver's receipts issued to these people with reference to whom I have interrogated you? A My answer now would be that if the books show that the contract was made for the timber covered by these receipts you are talking about, that my inference from that is that each one must have had a receipt for the property. I cannot recall the separate instances, as I have testified heretofore.

Q. It is an inference that you are drawing. I did not ask you to draw an inference. I ask you if you knew of an instance in which receiver's receipts, in either one of those cases— A. At the time or now?

Q. Well, put it now, then. A. I saw several of them yesterday in court.

111 Q. Is that the first time that you saw them? A. I have seen the receiver's receipts before.

Q. Is that the first time that you saw these receipts? A. I do not know.

Q. Do you know of the existence of any other receiver's receipts issued to either of these parties at that time, while you were president of that concern? A. I will have to answer that question in the way I did before. If the contracts were on the books I would know.

Q. I did not ask you that. You ought to know or you do not know.

Mr. Hemingway. I think that is a fair answer.

The Witness. That is the best answer I can give.

Q. Did you ever see any of those receipts during the time you were president of the concern? A. I do not recall. I cannot swear to that. I do not know.

Q. Were any of those receipts ever handed to you during the time you were president of that concern? A. I do not know.

Q. Did you turn over to Mr. Clark any of these receipts? A. I do not know.

Q. Did you turn over to Mr. Clark any papers, contracts, or otherwise, belonging to the Martin-Alexander Lumber Company? A. What do you mean by "turn over"?

Q. Hand to him—give them to him—for his inspection or examination. A. I know that deeds and papers connected with the business of the Martin-Alexander Lumber Company
112 came into Mr. Clark's possession at the time referred to. Whether I handed them to him or not, I do not know.

Q. What papers were those that came into his possession at that time? A. I could not answer that question.

Q. You do not know? A. If I had the documents referred to I could tell, I think.

Q. You make mention of deeds. Were there any deeds placed in his possession? A. There must have been, for we had a number of deeds.

Q. Do you recall the fact? A. I do not recall any special deeds.

Q. Do you recall any number of deeds at all? A. Any number?

Q. Yes. A. I have answered the whole question the best I can.

Q. Please repeat your answer.

Witness requested that his answer made previously be read, which was done in the following words: "I know that deeds and papers connected with the business of the Martin-Alexander Lumber Company came into Mr. Clark's possession at the time

referred to. Whether I handed them to him or not, I do not know."

Q. You do not know anything that refers to that except what is stated in that answer? A. The answer is confined to "deeds" and to "possession," is it not—the question, I mean?

Q. I said, any papers or documents of any kind, that
113 were handed to Mr. Clark. A. The trial balance drawn off from the books was also in his possession at that time. That is the only specific paper I can remember. My answer as to all others is as given.

Q. Were these papers and the trial balance given to him for the purpose of his examination? A. I would say, yes.

Q. How long did they remain in his possession? A. I do not know.

Q. You say that you sold your stock to Mr. Clark on the 14th of January, 1901? A. Yes, sir.

Q. Were those papers in his possession at that time? A. I do not recall seeing them.

Q. Do you recall whether he had returned them to you or not? A. I do not—To me? You mean the Martin-Alexander Lumber Company?

Q. Yes, sir. A. No, sir.

Q. You do not know whether they had ever been returned? A. I do not.

Q. Do you remember the fact of whether they were present during your discussion at the time of the sale and negotiations? A. Which time do you mean?

Q. Do you remember the fact of whether they were present during your discussion at the time of the sale and negotiations? A. I could not answer that question before. I can not answer it.

Q. Did you ever see these papers again after they
114 were given to Mr. Clark for examination? A. I do not know.

Q. You do not remember, then, what became of them, after they were turned over to Mr. Clark for examination? A. I do not know.

Q. Do you know whether any receiver's receipts were ever given to the Martin-Alexander Lumber Company? A. I do not know.

Q. How much of your time did you spend at Pike City? A. In a general way, I calculated to arrange it so I would get down there as near as possible once a month. It always happened that I did not get there as often as I tried to get there.

Q. How long did you stay usually? A. From a few days to a week.

Q. Do you think you remained as much as a week out of a month there? A. I don't—You mean the average there?

Q. Yes, sir. A. I do not think I did.

Q. What number of days did you average there during the month? A. I have answered that as near as I can; two days to a week, once a month—that is what I tried to do.

Q. Did the company keep any books showing the amount of timber cut from the separate tracts of land from which it cut timber? A. Yes, sir.

Q. Was that book left there when you sold your stock, as far as you know? A. Yes, sir.

115 Mr. Hemingway: What was the book called?

The Witness: This book that is referred to here?

Mr. Hemingway: Yes, sir.

The Witness: Log book. That is what I called it.

Q. Did the Martin-Alexander Lumber Company have in its possession any patents? A. I do not know.

Q. Do you know whether any patents— A. You asked that question of me about the Martin-Alexander Lumber Company, didn't you?

Q. Certainly. I did not expect you to answer anything you did not know. A. I do not know.

Q. Were any patents among the papers turned over to Mr. Clark for his examination? A. I do not know.

Q. Did you give the papers to him at the time they were given to him for his examination? A. I cannot recall. I know he got them. I cannot say where he got them, or how he got them. I know he had them.

Cross-Examination

By Judge Read:

Q. You have answered relative to these receipts, and papers, patents &c, as to their being in the possession of the Martin-Alexander Lumber Company, and you have answered that you do not know. If they were in the possession of any individual connected with the company you have no recollection of it? A. No, sir. My answer was, as far as I was personally concerned.

116 Q. It don't refer to any other member connected with it? A. No, sir.

Mr. Hemingway: Do you mean you don't know whether you had them, or, do you mean that you didn't have them, but don't know whether anybody else had them?

The Witness: That is what I mean, just exactly what you said. Put it down there.

Questions by Mr. Youmans:

Q. I understood that you did not remember whether you had them yourself, that is, you didn't know whether you had

them yourself, or you didn't know whether anybody else had them. A. I know I did not have them. If there were any receipts, I know I did not have them, but I didn't know about anything else.

Q. You do not know, then, whether anybody else connected with the concern had them? A. That question is answered.

Q. Answer it again. A. I know I did not have them, but I do not know about anybody else.

Q. Do you know whether anybody else had them? A. I do not.

And further the witness saith not.

117 A. V. Alexander, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. What was your business during the year 1899, 1900, 1901—1899, say, first? Answer. I was operating a sawmill at Pike City, Arkansas.

Q. To whom did that mill belong? A. Only as regards the particular time of which you speak?

Q. Yes, sir. A. To the Martin-Alexander Lumber Company, which was organized on December 20th, 1898, and from that time down to the present, or when Mr. Martin sold out, I was secretary of the Martin-Alexander Lumber Company.

Q. Were you manager also? A. Yes, sir.

Q. Did you have any knowledge of certain entries being made by the persons whose names I read to Mr. Martin, of the lands in controversy, under what is called the Timber and Stone act? A. I have some knowledge of it, yes, sir.

Q. Do you know of these parties having the receiver's receipts for the entries made by each one of them? A. Only in a general way.

Q. What do you mean by that? A. So far as those that I saw, I know they were issued. Many I didn't see at all. My presumption is they were all issued. I only know what I saw.

Q. When did you see them, if you did so? A. I don't know.

118 Q. Where did you see them? A. I might have been in different places when I saw them, and under different circumstances. Some I saw in the hands of parties who entered the land; some I think I saw in Mr. Copeland's hands; and, as I went through my safe—I think I saw some of them in my safe from time to time.

Q. Do you know how many you saw in the safe? A. No, sir; I do not.

Q. Do you know what became of those that you saw in the safe? A. I cannot state in detail as to each one of them,

but they were there subject to call of whoever owned them, and when they came to get them they got them I presume.

Q. Do you know whether these receiver's receipts that were in the safe ever went into the hands of U. L. Clark for any purpose? A. I do not know whether he ever got a single one.

Q. Do you know whether he ever had a single one in his possession or not? A. I do not.

Q. Did you ever give any of them to him? A. I have no recollection of ever giving him any final receipts.

Q. Did you ever let him have any of them for his inspection? A. I don't remember a thing about that positively.

Q. Do you remember letting Mr. Clark have any papers whatever belonging to, or in the possession of, the Martin-Alexander Lumber Company? A. I remember in a general way between Mr. Clark and myself and Mr. Martin, there were papers being handled among us all when he adjusted the thing, that we had occasion to refer to. Most of it
119 was the trial balance, taken from the books of the Martin-Alexander Lumber Company. I remember more about it than I do anything else.

Q. Do you remember whether any receiver's receipts at all were submitted to Mr. Clark for his examination? A. No, sir.

Q. Do you know whether any timber contracts were submitted to Mr. Clark for his examination? A. I do.

Q. What were those? A. What were the timber contracts?

Q. Yes, sir; and the persons by whom given? A. They were given—I mean by that that all the timber contracts which belonged to the Martin-Alexander Lumber Company, of every kind and character, were given to—were exhibited at that time. I don't know who gave them to Mr. Clark. They were being handled over there when we were there together.

Q. Do you remember whether the timber contract of John H. Scott was handed to him? A. Well, sir, I can't tell you. Whatever the books show that we had in timber contracts, of any kind and character, were given to Mr. Clark, or he got possession of them. Just who gave them to him I do not know.

Q. You don't know whether there were any receiver's certificates attached to those contracts or not? A. No, sir.

Q. If there were they were turned over to him for examination? A. I don't know. I have no recollection.

Q. Do you know whether any patents were submitted to him for his examination? A. No, I do not.

120 Q. Do you know whether the Martin-Alexander Lumber Company had in its possession any patents?

A. I know that there were some patents in the safe of the Martin-Alexander Lumber Company to be delivered to the parties to whom they belonged, as they called for them, but who they were I do not know, nor, neither do I know whether those were submitted to Mr. Clark or not.

Q. Do you know how many contracts the Martin-Alexander Lumber Company had taken for timber, or land, entered under the Timber and Stone act? A. No, I could not tell you without referring to the books.

Q. I will ask you to look at the ledger and find out how many there were, and the names of the parties. A. I would suggest that if you will call over the names there, it may refresh my memory as to what they had in timber contracts.

Q. Do you know whether the Martin-Alexander Lumber Company had timber contracts from all the persons whose names were mentioned to Mr. Martin? A. My recollection is that we did have contracts with all those persons whose names are mentioned.

Q. Were those contracts submitted to Mr. Clark for his examination? A. I think they were.

Q. Was Mr. Clark an officer of the Martin-Alexander Lumber Company? A. Not until the day of January 14, 1901.

Q. From the 14th of January, 1901, he was president
121 of the Martin-Alexander Lumber Company up to what time? A. It was a very short time. I think up to about the 1st of March.

Q. 1901? A. Yes, sir.

Q. Who is president of the Martin-Alexander Lumber Company now? A. Really, the Martin-Alexander Lumber Company is extinct. The charter has never been cancelled, though.

Q. You mean that its assets have been conveyed and sold? A. Yes, sir.

Q. How did he cease to be president? A. Why, just by closing up the business of the company.

Q. He did not resign? A. No, I don't remember about that.

Q. The Martin-Alexander Lumber Company ceased to do business? A. Yes, sir.

Q. Do you know where the books of the Martin-Alexander Lumber Company are? A. They are in the court here, I presume.

Q. You have reference to the books that were brought by Mr. Clark? A. Yes, sir.

Q. Do you know of any other books that the company had? A. I don't know the whereabouts of any other books.

Q. Were you the secretary of the Martin-Alexander Lumber Company at the time it ceased to do business? A. I don't hardly know how that was. I was secretary of the Martin-

Alexander Lumber Company up to the time that Mr. Martin sold out.

122 Q. When did you cease to be secretary? A. I guess when the business of the company was closed up, so far as I know.

Q. Do you mean when the business of the company was closed out, or the time when the Martin-Alexander Lumber Company ceased to do business; in other words, what do you mean by being "closed up"? A. We just continued to collect in the old accounts of the Martin-Alexander Lumber Company, and as soon as the business was wiped out it was discontinued. I think it was sometime until about March.

Q. You were secretary up to that time? A. I presume so.

Q. As secretary, the books were in your possession? A. Yes.

Q. What became of them? A. I could not tell you. I know that I had a great many old papers and books pertaining to the business of the Martin-Alexander Lumber Company burned up before any question in reference to these lands was brought up.

Q. Where were they burned? A. Right there at Pike City. We had a lawsuit belonging to this company, and, during the period of the lawsuit, these books were sent around over the country to check up, and many of them never did get back, and I don't know where they are to-day.

Q. I believe there was one thing mentioned this morning: you heard Mr. Brunson's statement, handing you certain deeds? A. No, sir.

Q. Did Mr. Brunson ever give you any deeds for the lands entered by Seyborn Z. Moran and his wife, Mary Moran, and Bill Dorsey? A. Well, sir, I couldn't answer that

123 question. I know that at that time that part of the business was in charge of Mr. McDonald, and whether he handed them to me or Mr. McDonald, I do not know.

Q. Do you know whether those deeds ever got into the possession of the Martin-Alexander Lumber Company? A. I do not think they ever did.

Q. Did they ever get into the possession of the Detroit Timber and Lumber Company? A. That, I could not say, because I had nothing to do with that part of the business at all.

Q. You do not remember, then, whether or not Mr. Brunson ever gave you any deeds conveying those lands? A. No, I have no positive recollection about that.

Q. If it is true that they were given to you, what would you have done with them? A. I would, likely, in the absence of Mr. Clark, who was there very little, have handed them over to Mr. McDonald, as that part of the business was under him.

Q. Who is he? A. He was a man representing the Land Department of the Detroit Timber and Lumber Company.

Q. That was Mr. Roy McDonald? A. Yes, sir.

Q. Did you have any official position with the Detroit Timber and Lumber Company? A. I did not.

Q. Did you have any stock in that company? A. I had, from April 22nd.

Q. What year? A. 1901.

124 Q. What were you doing from the 14th of January, 1901, up to the time that you obtained stock in the Detroit Timber & Lumber Company? A. I was occupying a position as general manager of the manufacturing department of the Detroit Timber & Lumber Company, on a salary, at Pike City.

Q. And when did your occupation as General Manager for the Detroit Timber & Lumber Company, at Pike City, cease? A. About the 1st of January of this year.

Q. The 15th of January, 1902? A. Yes, sir.

Q. Then, from the 14th day of January, 1901, to the 15th of January, 1902, you were general manager, as stated, for the Detroit Timber & Lumber Company? A. In the manufacturing department.

Q. Were there any transfers executed—transfers, deeds and contracts, and papers, from the Martin-Alexander Lumber Company, to Mr. Clark, or the Detroit Timber & Lumber Company? A. That is not clear in my mind. There may have been, and there may not have been.

A statement of Arch V. Alexander, dated October 4th, 1901, was introduced as a part of the testimony of this witness; which said statement is in words and figures following, to-wit:

"State of Arkansas,

"County of Pike—ss.

"On this 4th day of October, 1901, before me personally appeared Arch V. Alexander, who being duly sworn, on oath deposes and says:

"I am 46 years old, reside at Pike City, Arkansas, and
125 my Post Office address is Pike, Arkansas. Between spring of 1898 and March 1901, I was a member of the Martin-Alexander Lumber Co. In the latter part of January, 1901, the Detroit Timber & Lumber Co., a corporation under the laws of the State of Michigan, purchased the plant, lumber, timber and lands of the said Martin-Alexander Lumber Company, but the affairs of the Martin-Alexander Lumber Company were not wound up, till March, 1901. Mr. U. L. Clark, from Hunter's Creek, Michigan, was, at the time of the

purchase of the plant, etc., of the Martin-Alexander Lumber Company, the president and principal stockholder of the said Detroit T. & L. Co., and is the president of the said company now and looks after the purchase of lands, timber and the entire management of the affairs of the company, except the running of the mill plant. Mr. Clark was never in the locality of the plant nor the lands of the Martin-Alexander Lumber Company till January, 1901. I was employed by the company after the purchase, to manage the plant, but had nothing to do with the management of the company, and was not connected in an official capacity with the said Detroit T. & L. Co., till about the first of April, 1901, when I was elected secretary of the said company, and, as my duties, had to look after the management of the mill plant at Pike City, Arkansas. I had nothing to do with the purchase of any lands, as that part was looked after by Mr. U. L. Clark, the president of the company. In the early part of 1899, I had ascertained that there was a law, called the Timber and Stone act, which allowed any citizen of the U. S. to take up 160 acres of land, which was chiefly valuable for its timber and not mineral in character. I talked the matter over with Mr. E. B. Martin, the other member of the lumber company, and with Jim P. Copeland, who was in the real estate business "at Pike
126 City, Arkansas, and who had done some work for us up to that time, and with whom we conversed a good deal about land matters; Mr. Copeland had secured a copy of the land laws and we went over it and understood that a citizen could take up 160 acres of such land, provided he took it under the conditions described in the law; we then discussed the methods, which had to be pursued by such parties in order to comply with the strict letter of the law in taking up these lands, and Mr. Copeland remarked that he had lived in this locality for many years and was well acquainted with the majority of the citizens in the locality and that he believed that certain of his neighbors were upright and honorable men and who were eligible under the law, to take up such lands, and that if he had the money himself, he would not hesitate to loan such men as were eligible, and whom he could recommend, the amount of money necessary to enter such lands, without any agreement whatsoever with them, other than that they should pay the money back, with the legal rate of interest. Whereupon the Martin-Alexander Lumber Company, in certain instances, did make loans of different amounts to certain parties, taking a plain promissory note from them, bearing interest at the legal rate of interest, without any understanding whatsoever, except that the parties should pay the note and interest, when due. Mr. Martin generally procured the money, to furnish the money for the parties who

made the entries; he was the president and treasurer of the company, and, in one case, I took the money to Camden, Arkansas, and at Camden, on the day of the final proof, I loaned the money for the entry for the following named parties, to-wit: Seborn Z. Moran, Emma J. Moran, Chas. W. Davis, Mary E. Davis and Bill Dorsey, and I believe that I handed the money to Chas. W. Davis. I did not go [—] the Land Office with the parties, and when I gave the money to Davis,
127 did not "get any note at that time and instructed Mr. Davis that the notes would be signed on their return to Pike City, Arkansas. I have no recollection, in detail, in regard to the trips of Jim P. Copeland to Camden, Arkansas, nor in regard to the manner of his transacting the business there. After the parties had made the respective entries, the notes were turned in to the office of the company, and these notes were the only evidence of indebtedness of these people, and the company had no interest in the lands whatever, and no security upon the lands, and there was no obligation on the part of these people to sell the company the lands or the timber thereon, directly or indirectly. In such cases, where the expenses were advanced to these parties in filing on the land and making proofs, in which I had personal knowledge, the money so advanced was charged to the respective parties. Some time after these parties had received their receipt from the Land Office, about four or five months afterwards, and some a shorter time afterwards, the company went in the open market and offered to buy timber from these parties at the regular market price at 50 cents per 1000 feet, stumpage, which was the same price paid by the company for the timber on 7000 acres adjacent to their mill, and also the highest price paid for timber on deeded lands in the vicinity. The company bought the timber from the majority of these entrymen. Whenever the timber was purchased from any of these parties, such party received his or her note in lieu of the timber contract, which contract provided, that in case the timber on the land exceeded in value, at the rate of 50 cents per 1000 feet, the face of the note and interest thereon, that then the party was to get the difference at the said rate of 50 cents per 1000 feet, whenever the amount had been ascer-
128 tained. None of these contracts provided for any purchase of the lands of the company. The company never purchased nor bargained to purchase any of these lands from these parties. In making the purchases of the timber from these parties, I acted in perfect good faith, as I regarded the entry of these lands as entirely legal, as no agreement or contract had been entered into by the company or any of its officers or agents with these entrymen. Some of the pine timber has been cut and removed from some of these entries,

where the timber had been purchased, the Detroit Timber and Lumber Company purchased some of these lands, after they had acquired the property from the Martin-Alexander Lumber Company, and the purchase of these lands was ordered by Mr. U. L. Clark, the president of the company. The timber contracts which the Martin-Alexander Lumber [—] had with these entrymen, were turned over to the Detroit Timber and Lumber Company, and the same were also imbodied in a separate instrument of conveyance. I do not remember of ever having any conversation with Mr. U. L. Clark, in regard to these timber and stone entries, and to my knowledge, he had no information as to these entries. I remember Bedford F. Patterson; he was one of the parties, who made an entry under the Timber and Stone act.

"ARCH V. ALEXANDER.

"Subscribed and sworn to before me this 4th day of October, 1901, and I certify that the contents were fully made known to deponent, before signing.

"CHAS. A. M. SCHLIERHOLZ,
"Special Agent G. L. O."

Also a statement of date October 7, 1901, of Arch V. Alexander, was introduced as a part of the testimony of this witness; which said statement is in words and figures following, to-wit:

129 "And on this 7th day of October, 1901, again appeared Arch V. Alexander, and on oath further states: I neglected to state that of the five parties I met at Camden, Arkansas, and to whom I loaned the money, the following, namely, Seborn Z. Moran, Emma Moran and Bill Dorsey, never gave a note or any other evidence of indebtedness to the Martin-Alexander Lumber Company, or to myself. They refused to sell the timber to said company, after they had acquired perfect title to the land, and simply ignored their debt entirely, notwithstanding I offered to give them any reasonable time on the note, if they would simply sign one as an acknowledgment of indebtedness. I am not sure that the Martin-Alexander Lumber Company will ever collect a cent of the money loaned to any one of these parties named. The Martin-Alexander Lumber Company has only an open account against these parties, for the money loaned them. Most of these entrymen under the Timber and Stone act were, at the time, employed by the Martin-Alexander Lumber Company, and that is not significant, as I feel reasonable sure that for a distance of fifteen miles in every direction of the mill, about 80 per cent of the farmers have worked for the company, and do now work at the

mill here or in the woods for the present company, when the crops do not need their attention.

"ARCH V. ALEXANDER.

"Subscribed and sworn to before me this 7th day of October, 1901, and I certify that the contents were fully made known to deponent before signing.

"CHAS. A. M. SCHLIERHOLZ,
"Special Agent G. L. O."

And further the witness saith not.

Recess until 1:30 P. M.

130 U. L. Clark, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. Your name is— Answer. U. L. Clark.

Q. You are the president of the Detroit Timber & Lumber Company? A. Yes, sir.

Q. State whether or not you bought any stock of the Martin-Alexander Lumber Company, and when. A. On January 14th, 1901, I bought their interest.

Q. Do you mean you bought the interest of the stockholders? A. I bought the interest.

Q. Do you mean by "interest," anything else except the stock? A. I bought out the whole interest of Mr. Martin. His stock was simply transferred over to me as he wanted to get away so he could wind up the business quickly.

Q. State whether or not you were elected president to succeed Mr. Martin? A. Yes, sir; just for a short period.

Q. State whether or not you ever resigned as such president. A. No, sir; I don't think I did. The business was wound up, and the stock was all surrendered.

Q. When did the Martin-Alexander Lumber Company cease to do business? A. My impression is it was the first of the following March. I am not certain.

Q. Did you make an investigation of the assets and liabilities shown you, at the time you made this purchase? A. Yes, sir.

131 Q. What did you have, in the way of documents and papers, in making that investigation? A. I had their trial balances, showing their assets and liabilities, and the amounts invested in lands.

Q. Did you have anything else besides the trial balances? A. I had all their contracts, fee simple deeds. We checked off according to the tracts of land.

Q. Were any patents turned over to you for examination? A. I could not remember just whether there were any patents or not.

Q. Where are the deeds that were turned over to you? A. Part of them are in St. Louis, and part of them are here. Our deeds are here, that we turned over relative to these lands in dispute, with the exception of those that were surrendered to the parties from whom we took fee simple deeds.

Judge Read. He means at the time you bought the interest of the Martin-Alexander Lumber Company, what deeds were turned over to you?

The Witness. I answered they were all here, except those that had been returned to the parties who made these timber deeds—who made fee simple deeds.

Q. You have not answered me. I did not mean to refer to any contracts in that question. I just mean deeds outright. You spoke of timber deeds as well as deeds in fee simple. A. I consider a timber contract the same as a fee simple deed.

Q. How many deeds in fee simple were turned over to you as distinct from timber deeds? A. I could not answer that.

Q. How many deeds were turned over to you, if any, of any of these lands in dispute in this case? A. My impres-
132 sion is that they were all turned over, with the exception of Moran's and Dorsey, and the two Lintzes, Henry and Emma Lintz.

Q. Did you get any deeds at all from them in which any of the lands involved in this case were conveyed? A. Fee simple deeds?

Q. Yes, sir. A. No, sir.

Q. All that you got in regard to lands involved in this case were timber deeds or timber contracts? A. Yes, sir.

Q. How many of those did you get? A. I think there were thirty-nine or forty, probably forty-one. I am not certain.

Q. Did you get any receiver's receipts covering the same lands described in those timber contracts or deeds? A. No, sir.

Q. You say no receiver's receipts at all? A. No, sir.

Q. Did you ever have any of those receiver's receipts in your possession? A. No, sir.

Q. They were never in your hands at all? A. No, sir.

Q. Did you ever make any investigation of the title to the lands described in those timber contracts, before you com-

pleted your purchase? A. Nothing only Mr. Martin and Mr. Alexander told me that the title was all right.

133 Q. Did you have any knowledge then as to whether or not these lands had been recently entered at the Land Office? A. Under the Timber and Stone act?

Q. Yes, sir. A. No, sir.

Q. You didn't know that at all? A. No, sir.

Q. When did you first obtain information in reference to that? A. I could not answer that definitely, because I can't remember the different matters. It was along late in the latter part of the summer that my attention was called to it, at the time Mr. Schlierholz was there.

Q. Have you obtained any deeds from the parties who entered into those timber contracts with the Martin-Alexander Lumber Company? A. Yes, sir.

Q. From whom have you obtained deeds? A. There is a list of them.

Mr. Youmans: It will be understood, as they are read, the deeds from the respective parties for conveying the lands mentioned—the contracts—so we do not need to take the descriptions. He obtained deeds from so and so—from Robbie J. Hughes, Rosa L. Anderson, William F. Anderson, Emmett Keebaugh, B. F. Patterson, Charles W. Fuller, Henry P. Hughes, S. A. Fuller, Alvin Pry, George W. Cooper, Willie Cooper, E. Y. Fuller, Thomas Roberts, Mittie Robberts, Lawrence C. Horne, William F. Waits, Charles W. Davis, Jennie S. Pennington, Mary E. Davis, James D. Pennington, Charles W. Mackey, Carrie M. Hicks—all are timber deeds; they are not fee simple deeds—they are not timber deeds but

134 timber contracts.

Q. I hold in my hand a couple of instruments, one from Henry M. Lintz, and the other from Emma Lintz. What are they? A. I think those are timber deeds.

Q. How do you distinguish them from these other timber contracts? A. Those others are on fifty cent stumpage, and these are straight deeds.

Q. Did you, at the time these deeds were made by Emma Lintz and Henry Lintz, surrender a previous contract? A. I am not just clear about that. If I had the contract there it was surrendered to them. My impression is we did not have any contract from them, that I remember of.

Q. Don't the books of the Martin-Alexander Lumber Company show that there was a contract account with Henry Lintz, "contract No. so and so," and Emma Lintz, contract so and so? A. I don't know just what the books show there.

Q. On page 704 of the ledger of the Martin-Alexander Lumber Company, I will ask you if that does not show an account

sale: E. E. Lintz, contract No. 29, and another contract account sale: H. M. Lintz, contract No. 31? A. Yes, sir; the books do. If you will understand, I did not have those books in my possession when I checked the contracts. I compared their trial balance with the statement.

Q. But the books have since come into your possession, have they not? A. Yes, sir.

Q. And there is an entry on the credit side showing a transfer to your St. Louis books? A. Yes, sir.

Q. On the St. Louis Books of the Detroit Timber &
135 Lumber Co.? A. Yes, sir; that shows the transfer over to the St. Louis account.

Q. Have you any patents of any of these lands? A. Those right there with the deeds.

Q. There are patents with every deed that you obtained? A. With every fee simple deed I think there is.

Q. I want to get at the date of each one of those patents, and I want to show the date of the issuance of any other patents. Can you give me a list of the dates of each patent that you have in your possession covering any of these lands that were included in these timber contracts that you obtained from the Martin-Alexander Lumber Company, and from which you afterwards obtained fee simples? A. Yes, sir; I have the patents here, and the dates are as follows. (A statement of the dates will be found attached to the testimony of this witness.)

Q. Have you patents for the lands covered by the deed of D. D. Brunson to the Detroit Timber & Lumber Company? A. Yes, sir; I think they are all there together.

Q. They are included in the list you will furnish? A. Yes, sir.

Q. State how you came by the conveyance from D. D. Brunson to the Detroit Timber & Lumber Company, covering the lands described in the timber contracts of Seborn Z. Moran, Mary Moran and Bill Dorsey. A. There were no such contracts.

Q. The lands described in the deeds from them—how did you come into possession of that conveyance? How did that come to be made? A. Just to the details, I could not give you that exactly. This statement was turned over to us.
136 We had these accounts against Dorsey and the Morans.

Q. How did they appear on the books? A. I do not know.

Q. Did that appear as an account against Seborn Z. Moran, Mary Moran and Bill Dorsey, or did that appear as accounts against Seborn Z. Moran, contract so and so? A. I never saw them until I looked into that book way along in the summer.

Q. When you did look into it, did you find those accounts? A. I never examined those accounts.

Q. You found them just as they appear in the book to-day? A. Yes, sir; the books have never been altered, that I know of.

Q. I will ask you to look at the account on page 719 of the ledger of William Dorsey—that was a [personall] account against William Dorsey, was it not, as it appears on the book? A. Yes, sir.

Q. Under date of April 12, I notice the entry, "Paid to Pennick, $80.00." What does that mean? A. That means it was money that was given Pennick to get a fee simple deed from him—to buy his land.

Q. For whom was Pennick acting at that time? A. The Detroit Timber & Lumber Company had never employed Pennick. As I understand it, he was an employe of the Martin-Alexander Lumber Company; but I had never seen Mr. Pennick at that time.

Q. In procuring these deeds, for whom was he acting? A. I don't know as I just understand your question.

Q. Were those deeds turned over to you by Mr. Alexander, or by whom? A. I think the deeds were sent to the St. Louis office by Mr. McDonald.

137 Q. Who was Mr. McDonald? A. He works for us.

Q. For the Detroit Timber & Lumber Company? A. Yes, sir.

Q. Were the deeds procured through Mr. Pennick for the Detroit Timber & Lumber Company, or for somebody else? A. I think they were. That transaction was done through Mr. McDonald. I told him to try to get all the fee simple deeds he could. I do not know what understanding Mr. McDonald and Mr. Pennick had.

Q. Under those instructions you received those deeds from Mr. McDonald? A. Yes, sir.

Q. And there appears in the account of William Dorsey, an entry, "Paid to Pennick $80.00," and you suppose that was for that deed? A. Yes, sir.

Q. On the same page, and just below the account of William Dorsey, I find the account of E. J. Moran, and under the same date, April 12, I find the same entry, "Paid to Pennick:" was that for the same purpose? A. It was just the same, I reckon.

Q. On page 720 of the ledger, in the account of S. Z. Moran, under date of April 12, 1901, I find a similar entry, "Paid through Pennicks $80.00:" was that for the same purpose? A. I guess so.

Q. In each one of the accounts referred to, William Dorsey, E. J. Moran and S. Z. Moran, I find a charge against each

one of them of four hundred dollars: do you know what that was for? A. Not personally. That was on there be-
138 fore.

Q. Before you had anything to do with the concern? A. Yes, sir.

Q. I will ask you, Mr. Clark, to have your bookkeeper make a copy of each one of those three accounts, and send it to the Examiner, to be attached to your deposition as a part of it. A. Yes, sir; I will do so.

Q. I make the same request of you with regard to the J. S. Pennington contract, No. 65. A. Yes, sir.

Q. And the same with reference to the Jennie V. Pennington stumpage contract, 66. A. Yes, sir.

Q. And the same with reference to Carrie M. Hicks stumpage contract, 67. A. Yes, sir.

Q. And the same with reference to C. M. Mackey, stumpage contract, 68. A. That is a whole lot of work on our bookkeeper.

Q. I am going to do this so you can take the book back. I am going to make it as easy as I can for you. A. You want all the contracts of the timber business?

Q. Relating to those contracts—43 or 44 of them. I want just those I specified. A. You understand I don't know the timber and stone from any other.

Q. They are interspersed with the others. If you know what they are, send a list to the Examiner, and that will answer—of each one of these accounts as appears on the books of the Detroit Timber & Lumber Company, both debits and credits. A. Yes, sir; I will do so.

139 Q. There are credit items in some of these accounts: what do they consist of; what do they come out of, those credits? A. On this book?

Q. Timber cut from the respective lands, is that it? A. I expect so.

Q. Isn't that the way of keeping the account? A. That is the way I understand it.

Q. Here is the C. M. Mackey account, 68. There are a number of credits there. I understand those to be credits for timber from the land described in C. M. Mackey's contract. A. Yes, sir; Mr. Mackey was credited with that.

Q. Those credits, then, will show the value of all the timber cut from each respective tract of land, at the price of 50 cents per thousand, will it? A. Yes, sir.

Q. So far as this book shows? A. Yes, sir; so far as that book shows.

Q. And so far as the Detroit Timber & Lumber Company has any impression about it. A. I don't know anything about that.

Q. Will any other book show the value of the timber cut from these different tracts subsequent to the last entry on the credit side of this book—subsequent to the transfer to the St. Louis books? A. Yes, sir; we have got a record of all the timber we cut off of that land.

Q. I will ask you, then, to send to the Examiner a statement of the timber cut from each of these tracts of land, separately. Make it out and send it to him so it will
140 be part of your testimony. A. I will do so.

Q. That will show the value of all the timber cut from these different tracts, so far as the Detroit Timber & Lumber Company had anything to do with it, will it not? A. Yes, sir; it will show exactly what we were paying these people.

Q. It was worth fifty cents a thousand? A. Yes, sir.

Q. As to the timber cut by the Martin-Alexander Lumber Company, you know nothing about that? A. No, sir; I don't know anything about that prior to January 14th.

Q. Were any entries made, so far as you know, in this ledger, giving the credits for timber upon any of these tracts, prior to the time the Detroit Timber & Lumber Company bought the contract? A. I have never examined it. I don't know.

Q. If there are any entries of credits prior to January 14th, 1901, they were credits made by the Martin-Alexander Lumber Company, were they not? A. Yes, sir.

Q. I hand you what purports to be a release to George D. Coiston, executed by the Detroit Timber & Lumber Company, for lands described in his contract to the Martin-Alexander Lumber Company. I note that it appears to be witnessed by the Martin-Alexander Lumber Company, by A. V. Alexander, secretary. A. I don't know anything about that part of it down here (indicating).

141 Q. Did the Detroit Timber & Lumber Company execute that in St. Louis? A. Yes, sir.

Q. Do you know what the witnessing down there, purporting to be by the Martin-Alexander Lumber Company, by A. V. Alexander, secretary—do you know where that was attached? A. It was not attached in St. Louis; no, sir. I don't know who it was sent to after it was attached. I don't know why it was attached.

Q. That was executed by the Detroit Timber & Lumber Company? A. Yes, sir. There is the Detroit Timber & Lumber Company, and my signature as president (indicating); and there (indicating) is the receipt.

Q. On the 6th day of March, 1902? A. Yes, sir; whatever date is there.

Mr. Youmans: I request that a copy of the above named release be made by the Examiner, and attached as an exhibit to Mr. Clark's deposition.

The paper referred to is in words and figures following:

"This release, executed by the Detroit Timber and Lumber Company, party of the first part, to George T. Colston, party of the second part, Witnesseth: That

"Whereas, heretofore the said party of the second part has granted to the Martin-Alexander Lumber Company and by them transferred to said party of the first part the right to cut timber on the following described lands lying in the county of Pike and State of Arkansas:

"The east half (E2) of the northwest quarter (NW4), the northwest quarter (NW4) of the northwest quarter
142 (NW4), of Section seventeen (17), Township seven (7) South, and Range twenty-four (24) west, containing one hundred and twenty (120) acres.

"Now, Therefore, this release Witnesseth: That the said party of the second part, for and in consideration of one dollar in hand paid, is hereby forever released from all claims and demands of said party of the first part to cut timber on the said lands, or to enter upon the same, except for the purpose of building a railroad across said lands, and the acquisition of a right of way through the same reserved by the terms of said contract between said parties, which rights are hereby reserved and retained according to the true intent and effect of the contract aforesaid.

"In Testimony Whereof, the said Detroit Timber and Lumber Company, by U. L. Clark, its president, has hereunto set his hand and affixed the seal of said company.

"Done on this sixth day of March, 1902.

DETROIT TIMBER AND LUMBER CO.,

"[Seal] "U. L. Clark, President.

"Witness: Martin-Alexander Lbr Co.,

"By A. V. Alexander, Secty.

"State of Missouri,

"City of St. Louis—ss.

"On this day appeared before me, a Notary Public in and for said City, U. L. Clark, President of the Detroit Timber and Lumber Company, to me well known as the person mentioned in the foregoing instrument, and acknowledged that he had executed said instrument as President as aforesaid, and had caused the seal of said Detroit Timber and Lumber Company to be affixed to the foregoing instrument of writing for the consideration, uses and purposes therein mentioned and set forth.

"In Witness Whereof I have hereunto set my hand and
143 seal as such Notary Public on this 6th day of March, 1902.

"[Notarial Seal] "SCOTT SHORT,
"Notary Public, City St. Louis.

"My commission Ex. Oct. 11th, 1903."

Q. I show you an envelope, which appears, by the postmark to have been mailed at Little Rock, directed to George T. Colston, Esq., Pike City, Pike County, Arkansas. May it not be possible that you are mistaken in saying that this release was mailed from St. Louis to Mr. Colston? A. My impression is that I do not know anything about that envelope. That envelope don't signify anything. It don't signify that that release ever came in that envelope. The release was mailed from the St. Louis office.

Q. Have you not obtained a list of the deeds—of the issuance of all patents for the lands described in the various timber contracts? A. Yes, sir; I obtained a list of all the patents to the lands involved in this suit in Washington, in January of this year, and now submit the list, giving names and dates.

The list referred to will be found at the end of the deposition of this witness as a part thereof.

And further the witness saith not.

144 I hereby certify that the following papers were all the papers furnished to me to be attached as exhibits to the testimony of U. L. Clark.

P. C. HENDRICKS,
Examiner.

Amount of Timber Cut by the Detroit Timber and Lbr. Co. on Lands in Dispute, Since Jan. 14, 1901, up to Dec. 23, 1901.

	Land.	Value.	
E. Winslow	334,263 ft.	at 50c per M.	$ 267.13
J. O. Means	218,020 "	at 50c per M.	109.01
J. F. Patterson	596,944 "	at 50c per M.	298.47
Gus Copeland	728,960 "	at 50c per M.	364.48
C. M. Mackey	614,096 "	at 50c per M.	307.04
H. Jones	92,255 "	at 50c per M.	46.12
B. D. Copeland	704,680 "	at 50c per M.	352.34
R. C. Gregory	384,600 "	at 50c per M.	192.30
E. Lintz	148,028 "	at 50c per M.	74.02
John Scott	125,688 "	at 50c per M.	62.84
Martha Gregory	29,358 "	at 50c per M.	14.67
Henry Lintz	291,804 "	at 50c per M.	145.90
C. O. Means	118,779 "	at 50c per M	59.38
	4,587,475 ft.		$2,293.70

The above is the amount of timber cut from different entries, made by the several parties named, by the Detroit Timber and Lumber Co. since January, 14, 1901 to December 23, 1901.

145 Statements from the Ledger of the Martin-Alexander Lbr. Co., of Pike City, Ark.

Dr.	Wm. Dorsey			Cr.	
1900		1901			
Aug. 1	400.00	Apr. 30	by St. L.		505.75
8	18.00				
Sept. 1	7.75				
Apr. 12	80.00				
	505.75				505.75

Dr.	E. J. Moran			Cr.	
1900		1901			
Aug. 1	400.00	Apr. 30	By St. L.		505.75
8	18.00				
Sept. 1	7.75				
Apr. 12	80.00				
	505.75				505.75

Dr.	S. Z. Moran			Cr.	
1900		1901			
Aug. 1	400.00	Apr. 30	By St. L.		505.75
8	18.00				
Sept. 1	7.75				
1901					
Apr. 12	80.00				
	505.75				505.75

Dr.	J. S. Pennington Cont 65.			Cr.	
1900		1901			
Sept. 14	400.00	Apr. 30	By St. L.		427.25
Oct. 25	27.25				
	427.25				427.25

146 Dr. Jennie V. Pennington Cont # 66. Cr.

1900		1901		
Sept. 14	100.00	Apr. 30	By St. L.	127.25
Oct. 25	27.25			
	127.25			127.25

Dr. Carrie Hicks Cont # 67. Cr.

1900		1901		
Sept. 14	100.00			
Oct. 25	27.25	Apr. 30	By St. L.	127.25
	127.25			127.25

Dr. C. M. Mackey Cont # 68. Cr.

1900		1901		
Sept. 14	400.00	Jany. 26		18.68
Oct. 25	27.25	Feby. 16		6.69
		23		7.00
		28		17.65
		Mch. 11		3.37
		16		30.23
		30		20.65
		Apr. 19		23.44
		30		70.65
		30	By St. L.	228.89
	427.25			427.25

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Date Patents	Name	Description
Feb. 24, 1900	John H. Scott	NE-1/4 Sec. 1, T. 7 S R. 25
Feb. 24, 1900	Thos. J. Clements	N-1/2 S.W.-1/4, N-1/2 SE-1/4 Sec. 18, T. 7 S., R. 24
Feb. 24, 1900	Jim P. Copeland	S-1/2 SW-1/4 Sec. 17, S-1/2 SE-1/4 Sec. 18, T. 7S., R. 24
Feb. 24, 1900	John H. Wilson	S-1/2 SW-1/4 Sec. 18, W-1/2 NW-1/4 Sec. 19, T. 7 S. R. 24.
Feb. 24, 1900	Robbin J. Hughes	N-1/2 SW-1/4 Sec. 2. NE-1/4 SE-1/4 Sec. 3, T. 7 S. R. 25

Feb.	24, 1900	Robt. C. Gregory	E-1/2 NW-1/4, NE-1/4 SW-1/4 NW-1/4 SE-1/4, Sec. 1, T. 7 S. R. 25
Feb.	24, 1900	Martha Gregory	S-1/2 SW-1/4, SW-1/4 SE-1/4 Sec. 1, T. 7 S. R. 25
Aug.	9, 1900	Joseph O. Means	SW-1/4 SE-1/4, S-1/2 SW-1/4 Sec. 13, NW-1/4 NW-1/4 Sec. 24, T. 7 S. R. 25
Aug.	9, 1900	Arch G. Winslow	E-1/2 NE-1/4, NE-1/4 SE-1/4 Sec. 24 Sec. 13 T. 7 S. R. 25 SE-1/4 SE-1/4
Aug.	9, 1900	Caroline H. Means	N-1/2 SE-1/4, N-1/2 SW-1/4 Sec. 13 T. 7 S. R. 25
Aug.	9, 1900	Emma Winslow	N-1/2 SE-1/4 Sec. 15, N-1/2 SW-1/4 Sec. 14 T. 7 S. R. 25
Aug.	9, 1900	Jas. F. Patterson	S-1/2 SW 1/4 Sec. 14, S-1/2 SE-1/4 Sec. 15 T. 7 S. R. 25
March	23, 1901	Emma E. Lintz	S-1/2 NE-1/4 Sec. 2 T. 7 S. R. 25
March	23, 1901	Bill D. Copeland	E-1/2 SE-1/4, SW-1/4 SE-1/4 SE-1/4 SW-1/4 Sec. 12, T. 78 R. 25
Nov.	28, 1900	Henry M. Lintz	NW-1/4 NE-1/4, N-1/2 NW-1/4 SW-1/4 NW-1/4 Sec. 12 T. 7 S. R. 25
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Feb.	9, 1901	Rosa L. Anderson	SW-1/4 SW-1/4 Sec. 26 SE-1/4 SE-1/4 Sec. 27, T. 6 S. R. 25.
Feb.	9, 1901	Wm. F. Anderson	SW-1/4 Sec. 35 T. 6 S. R. 25.
Feb.	9, 1901	Gus G. Copeland	S-1/2 NW-1/4, N-1/2 SW-1/4 Sec. 23, T. 7 S. R. 25.
Feb.	9, 1901	Geo. T. Colston	E-1/2 NW-1/4, NW-1/4 NW-1/4 Sec. 17, T. 7 S. R. 24.

Feb.	9, 1901	Henry Jones	W-1/2 NE-1/4, E-1/2 NW-1/4 Sec. 19, T. 7 S. R. 24.
Feb.	9, 1901	Bedford Patterson	NE-1/4 Sec. 21 T. 6 S. R. 25.
Feb.	9, 1901	Emmett S. Keebaugh	SW-1/4 Sec. 21, T. 6 S. R. 25.
Feb.	9, 1901	Chas. W. Fuller	NE-1/4 Sec. 20, T. 6 S. R. 25.
Feb.	9-1901	Henry P. Hughes	NW-1/4 Sec. 21 T. 6 S. R. 25.
Feb.	9, 1901	Stephen A. Fuller	NW-1/4 Sec. 22 T. 6 S. R. 25.
Feb.	9-1901	Alvin Pry	S-1/2 SW-1/4 Sec. 14, T. 6 S. R. 25.
Feb.	9, 1901	Geo. W. Cooper	W-1/2 NE-1/4, W-1/2 SE-1/4 Sec. 22, T. 6 S. R. 25 W.
Feb.	9, 1901	Ezekiel Y. Fuller	N-1/2 SW-1/4, SE-1/4 SW-1/4 Sec. 22 NE-1/4 NW-1/4 Sec. 27, T. 6 S. R. 25.
Feb.	9, 1901	Willis Cooper	E-1/2 SE-1/4, SE-1/4 NE-1/4 Sec. 22, NE-1/4 NE-1/4 Sec. 27, T. 6 S. R. 25.
Feb.	9, 1901	Thos. Roberts	W-1/2 SE-1/4, SE-1/4 SE-1/4 Sec. 15, T. 6 S. R. 25.
Feb.	9, 1901	W. C. Roberts	SW-1/4 Sec. 15 T. 6 S. R. 25.
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Feb.	9, 1901	Lawrence C. Horne	NE-1/4 Sec. 11, T. 7 S. R. 25
Feb.	9, 1901	Wm. F. Waits	NW-1/4 Sec. 11, T. 7 S. R. 25
Feb.	9, 1901	Sherman Garrison	NE-1/4 NE-1/4 Sec. 22, N-1/2 NW-1/4, NW-1/4 NE-1/4 Sec. 25, T. 6 S. R. 25.
Feb.	9, 1901	Barbery Garrison	S-1/2 NW-1/4 N-1/2 SW-1/4 Sec. 23, T. 6 S. R. 25.

March 23, 1901	Seborn Z. Moran	E-1/2 NW-1/4, SW-1/4 NW-1/4 Sec. 25, SE-1/4 NE-1/4 Sec. 26, T. 6 S. R. 25.
March 23, 1901	Chas. W. Davis	SE-1/4 Sec. 26, T. 6 S. R. 25.
March 23, 1901	Bill Dorsey	SE-1/4 Sec. 25, T. 6 S. R. 25.
March 23, 1901	Mary E. Davis	SW-1/4 Sec. 25 T. 6 S. R. 25.
March 23, 1901	Emma J. Moran	NE-1/4 Sec. 25, T. 6 S. R. 25 W.
May 8, 1901	Jim S. Pennington	SE-1/4 Sec. 20, T. 6 S. R. 25.
May 8, 1901	Jennie V. Pennington	NE-1/4 SE-1/4 Sec. 21T. 6 S. R. 25.
May 8, 1901	Chas. M. Mackey	N-1/2 NE-1/4, N-1/2 NW-1/4 Sec. 23, T. 7 S. R. 25.
May 8, 1901	Carrie M. Hicks	SW-1/4 SW-1/4 Sec. 34, T. 6 S. R. 25.

150 Lands Deeded to Detroit Timber & Lumber Co. by the following parties:

Date of Deed	Name	Description
Apr. 3. 1901	Rosa L. Anderson	SE-4 SE-4 Sec. 27 T. 6 S. R. 25 W. SW-4 of SW-4 Sec. 26 T. 6 S. R. 25 W.
	Patent Number—19613—Date—Feb. 9. 1901	
Apr. 3. 1901	W. F. Anderson	SW-4 of Sec. 35 " "
	Patent Number. 19614—Feb. 9. 1901	
Apr. 17, 1901	Emmett Keebaugh	SW-4 of Sec. 21 " "
	Patent No. 19622	
Apr. 22, 1901	B. F. Patterson	NE-4 of Sec. 21 " "
	Patent No. 19621 Feb. 9, 1901	
Apr. 1. 1901	C. W. Fuller	NE-4 of Sec. 20 " "
	Patent No. 19623 Feb. 9, 1901.	
Apr. 4. 1901	Henry P. Hughes	NW-4 of Sec. 21 " "
	Patent No. 19624—Feb. 9. 1901	
Apr. 26, 1901	S. A. Fuller	NW-4 of Sec. 22 " "
	Patent No. 19628—Feb. 9, 1901.	
May 9. 1901	Alvin Pry	S-2 of SW-4 Sec. 14 " "
	Patent No. 19629—Feb. 9, 1901	
Apr. 9. 1901	G. W. Cooper	W-2 of NE-4 Sec. 22 W-2 of SE-4 Sec. 22 " "
	Patent No. 19630—Feb. 9, 1901	
Apr. 9. 1901	Willie Cooper	E-2 of SE-4 Sec. 22 " " SE-4 of NE-4 Sec. 22 " " NE-4 of NE-4 Sec. 27 " " 32—Feb. 9, 1901
	Patent No. 19631—Feb. 9. 1901.	
Apr. 13. 1901	E. Y. Fuller	N-2 of SW-4 Sec. 22 " " SE-4 of SW-4 Sec. 22 " " NE-4 of NW-4 Sec. 27 " "
Apr. 13. 1901	Thomas Roberts	W-2 of SE-4 Sec. 15 " "
Feb. 9, 1901	Patent No. 19633	SE-4 of SE-4 Sec. 15 " "
Apr. 13. 1901	M. C. Roberts	SW-4 of Sec. 15 " "
	Patent No. 19634—Feb. 9. 1901	

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Apr. 3, 1901	L. C. Horne	NE-4 of Sec. 11 T. 7 S. R. 25 W.
	Patent No. 19639—Feb. 9, 1901	
Apr. 1, 1901	W. F. Waits	NW-4 of Sec. 11 " "
	Patent No. 19640—Feb. 9, 1901	
May 24, 1901	Chas. W. Davis	SE-4 of Sec. 26 T. 6 S. R. 25 W.
	Patent No. 19647—Mch. 23, 1901	
Apr. 1, 1901	Jim S. Pennington	SE-4 of Sec. 20 " "
	Patent No. 19666—May 8, 1901	
May 24, 1901	Mary E. Davis	SW-4 of Sec. 25 " "
	Patent No. 19649—Mch. 23, 1901	
Apr. 1, 1901	J. V. Pennington	NE-4 of SE-4 Sec. 21 " "
	Patent No. 19667—May 8, 1901	
Sep. 17, 1901	Chas. W. Mackey	N-2 of NE-4 Sec. 23 T. 7 S. R. 25 W.
		N-2 of NW-4 Sec. 23 " "
	Patent No. 19668—May 8, 1901	
Apr. 1, 1901	Carrie M. Hicks	SW-4 of SW-4 Sec. 34 T. 6 S. R. 25 W.
	Patent No. 19669—May 8, 1901	
Apr. 22, 1901	D. D. Brunson	NE-4 of Sec. 25 " "
		SE-4 Sec. 25 " "
	Patent No. 19650—Mch. 23, 1901	
	Patent No. 19648—Mch. 23, 1901	
		E-2 of NW-4 Sec. 25 " "
		SW-4 of NW-4 Sec. 25 " "
		SE-4 of NE-4 Sec. 26 " "
	Patent No. 19646—Mch. 23, 1901	
Mch 27	Emma E. Lintz	S-2 of NE-4 Sec. 2 T. 7 S. R. 25 W.
Mch. 28, 1901	Henry M. Lintz	NW-4 of NE-4 Sec. 12 T. 7 S. R. 25 W.
		N-2 of NW-4 Sec 12 " "
		SW-4 of NW-4 Sec. 12 " "

152 L. E. Rowe, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Question. What was your occupation during the years 1899, 1900 and 1901? A. From the 1st of December, 1899, and on through 1900 and into 1901, I was in the employ of the Martin-Alexander Lumber Company.

Q. In what capacity? A. As bookkeeper.

Q. How long did you continue? A. I continued all the time from the 1st of December, 1899, to the 14th of January, 1901.

Q. For whom did you work after that time? A. For the Detroit Timber and Lumber Company.

Q. For what length of time after that time? A. Until the 1st of August, 1901.

Q. What books did you keep while you were working for the Martin-Alexander Lumber Company? A. I kept the cash, the journal and the ledger, and the log record and the check book.

Q. Did you keep the bills receivable? A. We did not keep the bills receivable outside of the ledger. That was in the ledger.

Q. Do you know anything of certain timber contracts executed by various parties to the Martin-Alexander Lumber Company? A. Yes, sir; I handled the entries for those timber contracts.

Q. Did you have anything to do with the contracts themselves? A. No, sir.

Q. Do you know where they were kept? A. No, sir.

153 Q. Do you know anything of certain notes executed by the same individuals who executed the contracts? A. In one or two instances I saw notes executed by the same individuals who executed the contracts.

Q. Did you make any entries with reference to these notes? A. Yes, sir.

Q. Where? A. First on the bills receivable.

Q. And ledger? A. And posted them to the Bills Receivable account in the ledger, first from the cash book.

Q. What entries were made in the cash book?

A. The entry would be there a check or a cash payment in currency, on the right hand side of the cash book, charged to bills receivable.

Q. In the name of the party to whom the check was issued? A. No, sir; but to the party by whom the note was given. That would be necessary in order to keep the notes separate in the bills receivable account.

Q. Those different items, then, were carried from that to the bills receivable account? A. Yes, sir.

Q. Where was it carried from there? A. It should be simply entered on this side of the bills receivable account. That would balance.

Q. Did it take any other form at that time that you know of? A. It took the form of a stumpage contract.

Q. Explain what you mean by a stumpage contract? A. I mean by a stumpage contract, a contract made with an

154 individual who owns timber, in favor of the company, to allow them to cut stumpage at so much per thousand feet.

Q. When you were giving your testimony in the other case, which is to be used in this case, you enumerated, didn't you, the several stumpage contracts? A. To which testimony do you refer?

Q. In the case that was just disposed of. A. In the court?

Q. Yes, sir. The case of United States against Martin et al. A. I went through the books with you. I didn't enumerate them myself. We went through the books one afternoon.

Q. And attention was called to it? A. Yes, sir.

Q. In the several accounts to which your attention was called, the first time a charge was entered under date of July

1st, 1900—was that the first entry of that item anywhere? A. No, sir.

Q. Where did that appear elsewhere? A. Before that, in the ledger, previous to this.

Q. Have you any recollection of when those entries were made in that other ledger? A. No, sir; no positive recollection of those dates. I know they were some time in the early part of the year 1900.

Q. I will ask you this: Do you know whether or not those entries were made at the time each note was cancelled? A. The entry would be simply—so far as the actual entry on the books—the actual cancellation of the note.

Q. Do you know it of your own knowledge? Did you see it? A. In one or two instances I saw "cancelled" written in red ink across the face of the notes.

155 Q. Did you get your information from somebody else—your information of the entry? A. The entry was made from verbal dictation.

Q. Verbal dictation from whom? A. Mr. Martin.

Q. How many of those notes did you see? A. Not more than three or four.

Q. Now, with regard to those you saw: did you get your directions from Mr. Martin at the time these notes were cancelled?

A. I could not testify to that—I don't know whether they were cancelled at that particular time, a few moments before or a month before.

Q. You mean to say, at the time you saw them they had "cancelled" written on them? A. Yes, sir.

Q. You don't know when they were cancelled? A. No, sir.

Q. You have already stated that the item of $27.25 appeared in each account, and was taken from the "Improvement" account? A. Yes, sir.

Q. They appear to have been entered under date of October 25, 1900? A. Yes, sir.

Q. Do you remember when these items were entered in the Improvement account? A. The Improvement account was in the books when I went there, and it grew along up to this date, October 25, in proportion.

Q. What was the Improvement account composed of—what was entered in that? A. Expense items handed in by Mr.

156 Copeland, and payment of entries, I presume, on these lands. I say "presume:" the reason I say "presume" is because I have not any real positive knowledge of anything except the expense items; but I know a check would be issued now and then, and I would be told to pass that to the Improve-

ment account. Of course I had an impression where it went and what it was used for.

Q. Were there any other items except those entered in the Improvement account? A. Yes, sir; one or two.

Q. Do you know what those items are? A. I remember of one particularly, because I happened to see it in the books just now.

Q. What was that? A. John H. Scott. I don't know what it was for—checked issued to J. H. Scott.

Q. When was that Improvement account started? A. Before I went there.

Q. You went there, you say, in December. A. 1899.

Q. Was that Improvement account closed at the time you made these different entries under date of October 25th? A. Yes, sir.

Q. That closed it, did it? A. Yes, sir.

Mr. McRae: What year?
Mr. Youmans: 1900.

Q. When was the business of the Martin-Alexander Lumber Company wound up? A. About the 1st of May, 1901, so far as I was concerned.

Q. Did you keep any books for the Detroit Timber and
157 Lumber Company, separate from those of the Martin-Alexander Lumber Company, or were the accounts continued under the Detroit Timber & Lumber Company? A. The accounts were continued in the same books.

Q. I want to ask you what these entries made in the cash book under the date of— A. June 30th.

Q. June 30th, 1900. A. Yes, sir.

Q. Those entries to bills receivable, William Dorsey, M. E. Davis, C. W. Davis, S. Z. Moran? A. That is an entry of bills receivable, $2,000.00, composed of bills receivable for four hundred dollars to each of the parties named in the account, check No. 2896, $2,000.00.

Q. Does that mean William Dorsey four hundred dollars, as an individual, M. E. Davis the same, C. W. Davis the same, S. Z. Moran the same, E. J. Moran the same? A. Yes, sir.

Q. What does the bills receivable account mean in that connection? A. It would indicate that we had their accounts for the amount of four hundred dollars each, in place of that money.

Q. That was under date of June 30, 1900? A. Yes, sir.

Q. Now, with regard to the other parties from whom these contracts were had, whose names appear in connection with stumpage contracts on the ledger: were there similar entries in regard to them under bills receivable? A. Yes, sir.

Cross-Examination

By Mr. Hemingway:

158 Q. You say this Improvement account was closed in October, 1900? A. Yes, sir—this entry, my recollection is, this entry of $27.25, closed up all the debit side of that Improvement account.

Q. And no entries were made in that after that time? A. I think not. I turn to the account on the books at page 118, and I find that that entry would clean it all up.

Q. When was it closed? A. On December 31st. It was by an entry to profit and loss in the closing of the books for the year. That was the last entry.

Q. December 31, 1900? A. Yes, sir. I could say positively that $1117.25 of it was cleaned out before that time by these $27.25 entries.

Q. And there never was but one other entry, and that was the entry to close up the books at the end of the year? A. Yes, sir. I see two others.

Mr. Youmans. What were those?

The Witness: I don't know. That $3.25 was cash returned by some one, and this $14.25, was a debit given to T. J. Clements. I should have to look that up.

Mr. Youmans: There are two items that you cannot explain without further reference?

Q. You say that on June 30, 1900, your bills receivable account shows that a check was drawn for two thousand dollars, and that five notes for four hundred dollars each were taken? A. Yes, sir; that is the date the entry was made, in the case of those checks. They sometimes would not be entered up for a week, if there were other matters that took up my time, and I would not post the stubs of the check books every day.

159 Q. Isn't it probable that these two thousand dollars were drawn to be advanced to those five persons with the expectation that they would give the notes, and that the entries were made upon that expectation? A. I couldn't say from my own knowledge, but my belief in the matter was that this money was drawn with the expectation of getting the notes for it, and I made the entries.

Q. As if the notes had been given? A. As if the notes had been given.

Q. And the same fact is true as to the other similar entries? A. Yes, sir. I never saw a man give a note. I could not testify that a man ever did give a note.

Q. Your entries were made from the check stub? A. Yes, sir.

And further the witness saith not.

160 George T. Colston, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. I exhibit to you a release purporting to have been executed by the Detroit Timber & Lumber Company to you for the lands mentioned in your contract with the Martin-Alexander Lumber Company, the release bearing date on the 6th of March, 1902. State whether or not you received that by mail? A. Yes, sir; I received this or one similar.

Q. Was that the one that you gave to Mr. Schlierholz? A. I gave him one.

Q. You received only one? A. Yes, sir.

Q. Did you receive it in the envelope which I now exhibit to you, showing the postmark of Little Rock, Ark., March 10, 1902? A. Yes, sir. I don't remember anything about the dates.

Q. I want to ask you with reference to a conversation with Mr. Roy McDonald. Do you know him? A. Yes, sir.

Q. State whether or not you had any conversation with him relating to the signing of any other contract? A. Yes, sir.

Q. On the land described in the contract made by you with the Martin-Alexander Lumber Company? A. Yes, sir.

Q. What was that conversation? A. He came into the house there where I was, in Pike City—where I was alone—

161 and made the remark that he had a contract, something similar, I suppose, to the contract I gave to the Martin-Alexander Lumber Company for the timber on the land, and asked me to sign it—a transfer contract, transferring the privilege to the Detroit Timber and Lumber Company—and I refused to sign it, and he seemed to be a little irritated about it because I would not do it.

Q. Did he say anything about the former contract with the Martin-Alexander Lumber Company? A. He said that the Martin-Alexander Lumber Company had promised to make all those timber claims good.

Q. Did he explain what he meant by that? A. No, sir; I don't think that he did.

Q. When was that? A. It was sometime between the 6th of March and the 1st of May, I think.

Q. What year? A. Last year.

Q. 1901? A. Yes, sir.

Mr. McRae. If you will put the date of this contract in his direct examination, I do not know as we care to ask him anything else. You didn't incorporate this release in the testimony, did you?

Mr. Youmans. Yes, sir.

Mr. Hemingway. This release is in the testimony of Mr. Clark.

Cross-Examination

By Mr. Hemingway.

Q. Do you remember the contract that Mr. McDonald wanted you to sign? Did you read it? A. No, sir; I read part of it; I didn't read it all.

162 Q. Did he read it to you? A. No, sir; I just read down a little and I saw it was a transfer, and, as I decided not to sign any more papers, I didn't sign it.

Q. Was it a transfer of the land? A. No, sir; it was the timber. It was pretty much the same contract, as far as I read. He also told me it was about the same, with the exception, I think, of the time.

Q. Hadn't all your timber been cut off by the Martin-Alexander Lumber Company? A. I think it had.

Q. Did he say what he wanted you to sign a timber contract for? A. I could not tell you about that.

Q. Are you certain it was not a deed for the land? A. No, sir; it was not any deed at all.

Mr. Youmans. We introduce the envelope referred to by this witness, bearing the post mark Little Rock, Arkansas, March 10th, 1902, and addressed to George T. Colston, Esq., Pike City, Pike County, Arkansas, and request that the Examiner incorporate it as a part of the deposition of this witness.

The envelope referred to, and introduced, contains upon its face the words and figures following, and which are set forth on the following page of this record, as nearly as practicable, in the manner and form as the same appear thereon.

[163]

Capital Hotel (post-mark:)
Jos. W. Irwin, Manager.
Little Rock, Ark.
Post Master

Little Rock
Mar 10
2-30P
19 02
Ark.

(Edge of two cent Stamp)

If not there please forward his address

George T. Colston Esq
Pike City
Pike Co
Arkansas

Important

No other endorsements appear upon the envelope.

And further the witness saith not.

* * * * * * * * *

172 Henry Jones, a witness called for the Government, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Question. What is your name? Answer. Henry Jones.

Q. What is your occupation? A. I am stenographer and bookkeeper.

Q. What was your occupation in 1899? A. I do not remember the date, sir.

Q. I will ask you this question: Were you ever in the employ of the Martin-Alexander Lumber Company? A. Yes, sir.

Q. When was that? A. That was three years ago.

Q. About three years ago? A. Yes, sir.

Q. What did you do? A. I was stenographer.

Q. In their office? A. Yes, sir.

Q. Where was that? A. Pike City.

Q. Pike county, Arkansas? A. Yes, sir.

Q. What did they have there: What was their business? A. A saw mill. The lumber business.

Q. What were your duties there, if anything else besides stenographer? A. I think nothing more than stenographer would cover it. I had to do all the duties of stenographer, and that covers a good lot of duties in an office.

173 Q. Did you do the typewriting? A. Yes, sir.

Q. State whether or not during the time you were in their employ you entered any public lands. A. I did.

Q. Do you remember when that was? A. I do not remember the date; no, sir.

Q. The paper I now show you, (showing witness paper), purports to be an affidavit signed by you. Is that your signature? A. Yes, sir.

Q. State when you made that affidavit. It purports to be dated the 8th day of February, 1900. A. Yes, sir.

Q. You made this at the Land Office? A. Yes, sir.

Mr. Youmans: I will read this affidavit.

* * * * * * * * *

The Court: That is the receiver that took the affi-
174 davit?

175 The Witness: Yes, sir.

Mr. Youmans: It may be admitted also that Mr. Schicker was the receiver.

Q. State how you came to make this affidavit, Mr. Jones? A. Do you want to know—I do not know just exactly how to answer the question.

Q. I want you to state what brought this to your attention: how your mind came to be directed to this entering of land—making this entry. That is what I mean by that question. A. In making this entry—my object in making the entry—

Mr. Read: I do not think it is competent to make him tell what his object was. The District Attorney asked him what directed his mind to it. He can tell all the facts that led up to making the entry: There is no objection to that; but I do not think his object is competent.

The Court: That might or might not be competent. I do not know what may follow that.

Mr. Youmans: I do not want to ask any improper questions. I am trying to get the facts of the matter, (to the witness), that led up to your making this entry.

The Witness: I had seen in my work in the office, and during my work in the office, where these entries had been made previously, and that directed my attention to the fact, and then I began to look into it to see whether I could make any entry of the same kind or not.

Q. How had your work in the office directed your attention to that? What had you observed? A. In the filing of papers and in the writing of leters there which had been dictated on the subject.

Q. By whom? A. I remember only one letter in
176 particular. I remember the leter.

Mr. Read: I object to his giving the contents of that letter.

The Court: Why?

Mr. Read: Because we think the letter itself would be the best evidence of its contents.

Mr. Youmans: I am not asking for the contents.

Q. Who dictated the letter that you have referred to? A. Mr. Alexander.

Q. Who was Mr. Alexander? A. Mr. Alexander was the secretary of the company; and he was the resident manager, as I understand it.

Q. You also spoke of the filing of papers. What papers did you file? A. Now, let me see. They were contracts for the sale of the timber.

Q. Anything else? Any other kind of papers? A. Now, I did not notice the papers particularly. They were papers bound together just as you have them here, with a rubber band.

or something pinned around them, and I did not open the papers to read them, more than I know that that is what they were.

Q. Where did you file these? A. These papers were—I do not know that they were filed in different places or not. The only place that I remember of having seen them was in a drawer in Mr. Alexander's desk.

Q. You said that your attention was directed by the filing of papers and by a certain letter dictated by Mr. Alexander: now what was the next thing that was done, or that was said by anybody with reference to the entry of this particu-
177 lar tract of land or any other tract? A. After I noticed this I spoke to Mr. Alexander, or Mr. Martin, or Mr. Copeland, I don't remember which. It seems to me I spoke to all three of them, and told them that if the matter was regular that I would take pleasure in taking up a hundred and sixty acres of that land.

Q. Why did you speak to them? A. Because I did not know anything about it—whether it was regular or not. They were the only ones to advise me.

Q. What did they say? A. They told me that it was entirely regular.

Q. What was done then? A. In the first place we went out to see the timber—see the land.

Q. You say "we." Who do you mean by "we?" A. There was myself and my wife, and Mr. Anderson and his wife, and Mr. Copeland, went out.

Q. What was the object of taking your wife? A. We were expecting each of us to take out one hundred and sixty acres of land.

Q. What was the object in Mr. Anderson and his wife going? A. The same object.

Q. Each of them expected to take up one hundred and sixty acres of land? A. Yes, sir.

The Court: Who was Anderson and his wife?
The Witness: Mr. Anderson was the sawmill foreman.

Q. In the employ of the Martin-Alexander Lumber Company? A. Yes, sir.

Q. What did Mr. Copeland go for? A. To show us
178 the land.

Q. What position did he have in the employ of the Martin-Alexander Lumber Company? A. Mr. Copeland occupied the position of timber man.

Q. What does that mean? A. The timber man looks after the timber—interests of the saw mill—and goes out in the woods. He is supposed to lay out the railroad and is sup-

posed to find out where the timber is, and to estimate the timber, and to secure timber, and, in fact, look after the securing and handling of the timber to keep the saw mill running.

Q. Why did he go with you; because he was familiar with the land and knew where the timber was? A. Yes.

Q. How did he happen to go—at whose instance? A. I don't remember.

Q. Did you ask him to go? A. I don't remember that—no, sir—I don't remember.

Q. How did you go? A. We went in a hack.

Q. All five of you? A. All five of us.

Q. What did you do then? A. We went out and Mr. Copeland showed us four different quarter-sections of land.

Q. What was the object of his showing you those quarter-sections? A. Mr. Copeland explained to us that in taking up this land, we must see the land ourselves personally.

Q. He showed you the land? A. Yes sir.

179 Q. Then what was done? A. Then we came back home; and I think possibly ten days, or it may have been three weeks, it was some time I should say in the neighborhood of two weeks, when we went to Camden.

Q. You went to Camden? A. Yes sir.

Q. Did you go by yourself? A. Gus Copeland and George Colston and I.

Q. Did your wife go? A. No sir.

Q. Why didn't she go? A. My wife backed out when she come back home and said she didn't believe she would go into it.

Q. Did you have any conversation with either one of the defendants with regard to the fact that your wife declined to go? A. Yes sir.

Q. With whom? A. With Mr. Martin and Mr. Copeland.

Q. What was that conversation? A. They asked me why my wife didn't go, and I explained to them why she didn't go.

Q. What did they say to you, if anything? A. I don't remember the conversation. They expressed some disappointment that she didn't go.

Q. Who expressed it? A. Mr. Martin and Mr. Copeland both expressed disappointment that my wife didn't go.

Mr. Read: I object to that testimony. I don't think it is competent. He don't remember what they said about it, but is stating his conclusions in regard to their conversation about the matter. I don't think it would be competent. (To the witness) You say they expressed themselves that way?

180 Mr. Youmans: What did they say, if you remember?

The Witness: The only thing that I can remember that was said was that I remember that Mr. Martin said it

was all right. He said "never mind, that is all right." He said "let somebody else take that."

Q. Take what? A. That quarter section of land that my wife wanted.

Q. You say afterwards, you and Colston and Gus Copeland went to Camden? A. Yes sir.

Q. State whether or not you paid your own expenses. A. The money for the expenses was advanced by the Martin-Alexander Lumber Co. I paid the expenses for all three of us myself.

Q. What did that include? A. It included the entire expenses, the railroad fare and the hotel bill.

Q. What different expenses you incurred? A. Yes sir.

Q. There were three of you? A. Yes sir.

Q. And you had the money and paid the expenses? A. Yes sir.

Q. What did you do when you got to Camden? A. When we got to Camden we made our application.

Q. This application that was read here was the application you made at that time? A. Yes sir.

Q. What [—] Colston and Copeland do? A. They made similar applications.

The Court: Who was Colston?

The Witness: He was a fellow-employee of the Martin-Alexander Lumber Co.

181 The Court: Who was Copeland?

The Witness: Copeland was, I don't remember if Copeland was working for the Martin-Alexander Lumber Co. or not.

The Court: That was Gus Copeland?

The Witness: Yes sir.

The Court: Was he related to the defendant Mr. Jim P. Copeland?

The Witness: Uncle Jim's son.

The Court: They made affidavit similar to the one you had made?

The Witness: Yes sir.

Mr. Youmans: We will consider this in?

Mr. Read: Yes sir.

Q. How did you get a description of that land? A. Mr. Copeland gave me a description of the land.

Q. Which one? A. Uncle Jim Copeland.

Q. You call the defendant Uncle Jim Copeland? A. Yes sir.

Q. You came back after making applications, each one of you? A. Yes sir.

Q. What did you do when you came back with reference to the expenses? A. I made out, as I remember, an expense account, and turned it in to the bookkeeper.

Q. Did you get anything at the land office? A. No sir, I think not.

Q. To refresh your recollection, did you get a notice for publication? A. I don't remember.

Q. I will ask you whether you got that paper (paper shown to witness) at that time? A. (After examining paper)
182 I don't remember, sir.

Q. You don't remember whether that paper was given to you by either one of the officials of the land office? A. No sir, I don't.

Q. Do you recollect having any notice published when you returned? A. Yes sir.

Q. You recollect that? A. Yes sir.

Q. Do you know where you got that notice? A. No sir, I don't remember that.

Q. What did you do with regard to having something published? A. I remember speaking to Mr. Nash, the publisher of the paper at Pike City. He asked me for the description of the land and I gave it to him, and he said, "that is all right, I will fix it."

Q. How did you give it to him? A. Verbally.

Q. Do you recollect it? A. Yes, sir.

Q. Who paid for the publication of the notice? A. I think the Martin-Alexander Lumber Co. paid for the publication of the notice.

Q. Do you know who paid for the publication of the notice in the cases of Gus Copeland and George T. Colston? A. No sir, I do not.

Q. But with reference to yours, you think the Martin-Alexander Lumber Co. paid for it? A. I think they did.

Q. What was the next step with regard to that matter? A. Nothing further until, at the proper time we went down to make, I don't know what you call it,—the final,—

Q. Proof? A. Yes sir.
183 Q. What do you call the proper time, what do you mean by that? A. That was, as I remember it, sixty days.

Q. Who went down? A. The same three.

Q. How did you come to go together? A. Well now, I suppose, the three of us went down together, as we [—] witnesses for each other in the first work, and as the time come to make the final proofs at the same time, for each of us, we went down together again.

Q. Now, you expected to pay $2.50 an acre, did you? A. Yes sir.

Q. Where did you get that money? A. From the Martin-Alexander Lumber Co.

Q. How? A. I gave them my note.

Q. When? A. I don't remember the date of it. I think it was dated the same day we went.

Q. Do you know how much that was for? A. $400.

Q. How much money was given you? A. I was given $1200.

Q. Why? A. There was $400. to cover mine, and $400. to cover each of the other boys'.

Q. What did you do with reference to that? A. They signed the notes. We all three signed the notes.

Q. Where? A. At Camden.

The Court: All three of you signed each note?

The Witness: No sir, each one signed his own note.

184 Q. Where did you get the money at Camden? A. I had the money when we left Pike City.

Q. Who gave you the money? A. I don't remember who it was gave me the money,—whether it was the book-keeper, or a member of the firm.

Q. What transpired with anybody with reference to money,—in other words, how did it come that they let you have that much money? A. I don't know, only on the loan.

Q. What was said there in reference to a loan? A. They told me they would loan me the money to buy that land.

Q. When did they tell you? A. They told me at the time I asked for the explanation of the matter,—if it was all right.

[A]. They told you? A. Yes sir.

Q. How did they come to tell you that? A. I think, as I remember it, I suggested to them,—as I told you a while ago,—I think that I suggested to some member, either Mr. Martin or Mr. Alexander or Mr. Copeland, or possibly all three of them; I think I suggested to them, if this matter was all regular, that I would take pleasure in taking up 160 acres of land and that I thought my wife would also. They told me it was, and if I wanted to do it that they would loan me the money to do it.

Q. Was that all that was said? A. Yes sir.

[—] Nothing said about security? A. No sir.

Q. Nothing said about payment? A. No sir, not that I remember of.

The Court: When were the notes to mature?

The Witness: I think it was six months, as I remember. I am not positive about that.

185 Q. You say that you told them that if it was all regular you and your wife would take up some of that land,

and that they explained it and said if you did they would loan you the money to do it with? A. Yes sir.

Q. There was nothing said then about the repayment of that money? A. No sir.

Q. Or how it was to be done? A. No sir.

Q. To refresh your recollection, didn't you tell me on yesterday that you replied to them that you didn't know how you were going to pay it except from the timber on that land? A. I did not understand that exactly right, and I did not answer you right. The fact of the matter is I don't remember any conversation,—I don't remember the conversation,—but my understanding was that I was to pay that note by selling the timber on the land.

Q. To whom? A. Well, I expected to sell it to the Martin-Alexander Lumber Co.

Q. Was there any conversation with reference to that subject among you,—the matter of payment, and how? A. No sir, I don't remember any conversation.

Q. What are you giving, then, in that answer if you say you don't remember any conversation? The question was this: was there anything said among you as to how, or when, that money should be repaid? Now, you have answered that by saying what your understanding was. A. Yes sir.

Q. From what was the understanding derived? A. The fact, probably, that I knew of these other parties,—that I said in my first testimony that other parties had sold their timber to the Martin-Alexander Lumber Co., and I knew that they
186 wanted timber, and I knew, in reason, that I could sell it to them: but there was no conversation between Mr. Martin and Mr. Alexander and myself that I remember that I should sell them this timber.

Q. Yet you understood that? A. I knew, in reason, that I could sell them the timber and I felt that,—that was my hope to do.

Q. Was there anything said between Mr. Copeland and Mr. Martin and you with reference to an agreement for the sale of that timber? A. There was not.

Q. There was nothing said? A. No sir.

Q. Was anything said by Mr. Alexander with regard to an understanding or agreement? A. Not that I remember.

Q. Did not you state to me on yesterday, Mr. Jones, that you said to them that you didn't see how you were to pay that note, except from the timber on the land? A. I don't remember that, Mr. Youmans; but that was my feeling in the matter.

Q. Didn't you state, also, that Mr. Alexander said they would not make any agreement with you in regard to that? A. No, I don't remember.

Q. You understood my question: there was no agreement? A. No sir. Mr. Martin told me when we left, "understand Jones there is no agreement between you and I, or "between you and the company to buy that timber from you."

Q. When did he tell you that? A. Just before the train left Pike City.

Q. What was the reason for his making that remark in that connection? A. I can not say. That was a voluntary remark.

187 Q. There was nothing to call it up that you said? A. No sir. I don't think so.

Q. He made that remark to you and said, "now, understand, there is no agreement between you and the company to buy the timber on that land?" A. Yes sir.

Q. You went to the land office with the money? A. Yes sir.

Q. And so you signed the note at Camden? A. Yes sir.

Q. Where did you sign the note and when? A. I had the notes. I made them out myself on the typewriter the day the blank notes came back and $1200. in money, and we three boys signed the notes.

Q. Where? A. At Camden, in the office of the Ouachita Hotel. We each signed his own note and I gave the other boys $400. each, covered by the signed notes and put these notes in my pocket.

Q. Then what did you do? A. We went to the land office then and made our final proofs.

Q. What is this paper that I hand you? A. I don't remember the paper, sir.

Q. It purports to be what? A. Testimony.

Q. Of whom? A. Of myself.

Q. Before the land office? A. Yes sir.

Q. Is that your signature? A. Yes sir.

Q. You executed that paper then, before Charles Duke, Register? A. Yes sir.

188 Mr. Youmans: Just consider that in evidence. I will read it. (Reading)

* * * * * * * * *

191 Q. You made that affidavit, and swore to it as it purports to have been sworn to? A. Yes, sir.

Q. You say that Gus G. Copeland was your witness? A. Yes, sir.

Q. What do you mean by that? He was the witness as required by the regulations? A. Yes, sir.

Q. What does that paper purport to be? (paper shown witness) A. The testimony of the witness.

Q. Of Gus G. Copeland? A. Yes, sir.

The Court. Was he an employe of the company?
The Witness. I don't know, sir, at that time if he was.
The Court. Had he been?
The Witness. Yes, sir.
The Court. In what capacity?
The Witness. In some capacity in the office, but I don't know what.

Mr. Youmans. I will read the testimony of the witness Gus G. Copeland. (reading)

* * * * * * * * *

193 Q. What is that paper that I show you? (showing witness a paper). A. That is the testimony of George Colston.

Mr. Youmans. That is the same character of testimony. We will just consider it in.
Judge Read. Read it.

Mr. Youmans read the testimony of George T. Colston, which said testimony is in words and figures following, to-wit:

* * * * * * * * *

195 Q. That testimony was made at the time you paid this money? A. Yes, sir.
Q. Did you get anything from the officers at that time? A. They gave us a receipt for the money.
Q. Is the paper I now hand you the receipt that you received? A. Yes, sir.

Mr. Youmans. I will read it. (reading)

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The Court. Is it conceded that is the land that is
196 described here that was entered by him?
Judge Read. I assume it is so. So far as that is concerned, we concede that it is. We raise no question about that. We have not had an opportunity to go over it. We will compare it to-night.

Q. Were not those receipts issued in duplicate? A. I do not remember that.
Q. Were they not signed in duplicate and one given to you, and one retained at the Land Office? A. I do not remember that.
Q. At any rate you got a receipt? A. Yes, sir.
Q. And it was this? A. Yes, sir.
Q. And for the purchase of the land for which you made the entry? A. Yes, sir.

Q. What did you do with that receipt? A. I turned it in, I gave it to Mr. Copeland, or Mr. Alexander, or Mr. Martin, I don't know which; to some one in the Martin-Alexander Lumber Company's office. I don't remember who.

Q. Was it one of the three, Martin, Alexander or Copeland? A. Either one of those three, or the bookkeeper, I couldn't say.

Q. You, Colston and Copeland, each one, received a receipt also? A. Yes, sir.

Q. What became of those receipts? A. I don't know, sir.

Q. Where was your receipt kept? A. I think I remember having had that receipt left in Mr. Alexander's desk,
197 possibly, a day or two afterwards. I don't remember the time. I remember of seeing it lying on his desk.

Q. What was he doing with it? A. I couldn't say.

Q. You just left it there where you saw it? A. Yes, sir.

Q. What next occurred with reference to this land? A. In possibly two or three days, it may have been the next day and it may have been a week afterwards, Mr. Copeland called me into another part of the office where I was working, and handed me a contract for the sale of the timber to the Martin-Alexander Lumber Company, and told me that if I would sign this contract he would cancel the note.

Q. Is this the contract? (paper shown witness) A. Yes, sir.

Mr. Youmans: I will read that.

Mr. Read: All right.

Q. You signed that, did you? A. Yes, sir.

Q. That is the same description contained in your receipt? A. (after comparing papers) Yes, sir.

Judge Read: Let me see that.

(Paper passed to Judge Read, and afterwards read by Mr. Youmans, it being in words and figures following, to-wit:)

* * * * * * * * *

199 Q. That was signed by you on the second day after you received the receipt? The receipt purports to have been on the 24th of April. A. **Yes, sir.**

Q. And that contract purports to be executed on the
200 26th of April? A. Yes, sir.

Q. It must have been the day after you returned from Camden when you paid that money? A. Yes, sir; it must have been.

The Court: What became of your note?

The Witness: The note was cancelled, sir, at the time. The note and this receipt and that contract were all pinned together.

Q. What was done with them then? A. I don't know, sir.
Q. You don't know what became of them? A. No, sir.

The Court: Who took them?
The Witness: Mr. Copeland and I were alone, and, if I remember rightly, I took a pin and pinned them together, and handed them back to him.

Q. How was it cancelled? A. Mr. Copeland wrote across in red ink "cancelled."

The Court: And kept it?
The Witness: Yes, sir.

Q. Why didn't you take it if it was paid? A. I could not explain that, sir.

Q. You have spoken about having seen other contracts that were similar to this contract that you have signed? A. Yes, sir.

Q. Where were they? A. They were—when I saw them they were filed in a drawer in Mr. Alexander's desk.

Q. Do you know whose contracts they were? A. Yes, sir; I do, but not from memory. I remember my contract was there, and I remember these two boys, because I was associated with them, Gus Copeland and George Colston; and I remember having noticed Frank Anderson's contract.

Q. Were their notes pinned to the contracts also, and their receipts? A. I don't really remember that.
Q. You don't remember that? A. No, sir; I do not.
Q. Do you remember for what amount you made that note? A. Yes, sir.
Q. For how much? A. Four hundred dollars.
Q. Even? A. Yes, sir.

The Court: Had you gotten up these contracts in typewriting, the typewritten part of them?
The Witness: Yes, sir.
The Court: In blank?
The Witness: Yes, sir.
The Court: How many of them?
The Witness: I don't remember. I must have drawn—I don't remember how many I did draw up. Quite a number.
The Court: It is indefinite. How many?—ten, fifteen, or twenty, thirty or forty, one hundred or how many?

The Witness: I would be safe in saying a dozen.

Q. When did you draw them up? A. From time to time.

Q. That is not very definite as to the particular day.

202 Before or after you had made your entry down there? A. This contract, as I remember it, that I drew up, that I saw here—I wrote that contract out the morning that I signed it.

Q. How? A portion of this is in writing: is that your handwriting? A. No, sir—hold up! Wait a minute! I may be mistaken in that.

Q. Then you don't know that you drew up this contract that morning? You see blank spaces are left there for the name, date and description of the property, whether you drew it up that morning or not? A. I suppose that was the only one I drew up.

Q. You did draw up one that morning? A. Yes, sir.

Q. And you suppose this is the same one? A. Yes, sir.

The Court: In whose handwriting is the handwriting in that contract?

The Witness: I think that is Mr. Martin's handwriting.

Q. In your testimony before the Land Office, in answer to the question as to what the estimated market value of the timber standing on this land was, you said about four hundred dollars? A. Yes, sir.

Q. That was the amount of your note? A. Yes, sir.

The Court: How came you to draw up a contract that morning? How came you to draw that blank contract?

The Witness: I think it was Mr. Martin, or Mr. Alex-

203 ander, gave me a contract and instructed me to draw up a few blanks.

Q. That very morning? A. Yes, sir.

Q. Was that all he said with reference to it? A. As I remember it, yes, sir.

Q. Later in the day Mr. Copeland spoke to you, and presented this contract, and asked you to sign it? A. Yes, sir.

Q. And stated if you signed it your note would be cancelled? A. Yes, sir.

Q. He cancelled it in red ink, and you took the note and receipt—where was the receipt? Did he have it? A. Yes, sir; he had all the papers.

Q. You mean by the papers, the contract, the receipt and the note? A. Yes, sir.

Q. After he had finished, you pinned them up, and handed them back to him? A. Yes, sir.

Q. Do you know what became of the contract then, and those other papers? A. They were both filed, presumably, as I saw them afterwards filed in a drawer in Mr. Alexander's desk.

Q. Did you read the contract over before you signed it? A. Yes, sir.

Q. And saw it was a conveyance of the timber on the lands to the company for ninety-nine years? A. Yes, sir.

Q. Were the expenses charged to you in that trip? A. I don't know how those expenses were entered on the books.

204 Q. Was there any agreement among you that the expenses were to be charged against you on the books? A. There was nothing said to me in regard to that.

Q. Has there been anything said to you since in regard to that? A. I understood that the expenses were to be taken care of without cost to me, but I didn't understand how.

Q. Taken care of: what do you mean by taken care of? A. I will explain it in this way: On both our trips money was advanced to me to cover our expenses—it may have been fifteen or twenty dollars was handed to me to cover our expenses—and when I came back I made out an expense account of the trip and handed it in with the balance, to the bookkeeper, and I felt that I was through with it then.

Q. No other obligation rested upon you? A. That is the way I felt about it.

Q. Was there any conversation between you and Mr. Martin and Mr. Alexander and Mr. Copeland in regard to the matter? A. I don't remember.

Q. Nothing further was said to you? A. No, sir.

The Court. Whose hack did you go out to see this land in?

The Witness. I think it was Mr. Frank Buck's, I don't remember; I think he had a livery stable in Pike City at that time.

The Court. Who got the hack?

The Witness. Mr. Copeland.

The Court. And who paid for it?

The Witness. I don't know, sir.

205 Q. Which Copeland got the hack? A. Uncle Jim.

Cross-Examination

By Judge Read.

Q. You said that Mr. Copeland went with you to Camden: what aged man was he? A. I should say he was some place between twenty-two and twenty-six years old.

Q. A younger man than you? A. Yes, sir.

Q. Who was the other man with you? A. George Colston.

Q. What aged man was he? A. I should say a man about my age.

Q. And Gus Copeland was the youngest man in the party? A. Yes, sir.

Q. You three went together on both trips? A. Yes, sir.

Q. There was nobody else from the Martin-Alexander Lumber Company went with you at all? A. No, sir.

Q. You went by yourselves, and made your entries and made the final proof? A. Yes, sir.

Q. You said that Mr. Jim Copeland, the defendant, went with you to examine these lands? A. Yes, sir.

Q. Did you all examine the lands? A. Yes, sir.

Q. What quarter section did you get? A. I got a quarter section which lies about a mile from Pike City, to the
206 northwest.

Q. How did you happen to get that quarter section? Why did you get it? A. Uncle Jim showed all four of us—showed each of us—a quarter section of land, and then asked each one of us which one of the quarter sections of land we would prefer to take up. We all picked out this quarter section that was closest to town, and Uncle Jim prepared straws, and we drew straws, and I got that one.

Q. Was that the best quarter section that you saw? Did you regard that as the best quarter section? A. Yes, sir; I did.

Q. You stated, didn't you Mr. Jones, something about that being a good quarter section of land up there, didn't you? A. Yes, sir; the matter was brought to my attention, and I was thinking of it—I suppose it must have been a month or six weeks before I actually took it.

Q. You had an idea, didn't you, that land that close to Pike City would be valuable in the future? A. I hoped to make some profit for myself by the fact that there was a good second-growth timber on the land, and the land being within a mile of Pike City, future developments might be to my benefits.

Q. To own that land? A. Yes, sir.

Q. Then, as a matter of fact, you did want some land near Pike City? A. Yes, sir.

Q. That land in particular? A. Yes, sir.

Q. Mr. Copeland, Mr. J. P. Copeland, is a surveyor,
207 and is presumed to know where the land lies, and the prices of the land, is he not? A. Yes, sir.

Q. And went with you and showed all four of you these three sections of land? A. Four of us?

Q. Do you know what the Martin-Alexander Company were paying for timber, generally, in that neighborhood? A. It was costing them in the neighborhood of fifty cents a thousand, stumpage.

Q. You mean, now, whether they bought timber off the land which had been entered under the Timber and Stone act, or whether they bought from people who owned their land? A. As I said awhile ago, I know of them buying timber off of this other timber land—timber and stone land—and I know also—well, I don't know—yes, I do, too; I heard Uncle Jim

tell Mr. Alexander one night when he came in, that he bought the timber on a certain person's land for a certain price, and between themselves they figured it up, and said it would amount in the neighborhood of fifty cents a thousand.

Q. So this, you know, was the price they were paying? A. Yes, sir.

Q. These contracts that were prepared by you; were they signed by you; and do you know whether they were used by them generally, or whether they were used on this particular occasion, or not? A. I don't think I ever read but one of these contracts; that was mine; and the contract was handed to me to copy this one from; and that same contract that I copied this one from is, I presume, the one that I copied the morning I signed it. I copied several, only they were copied from the same original that I copied this one from in the morning on my typewriter.

208 Q. You don't know what their habit was with reference to this contract? A. Yes, sir.

Q. Was this the common form that they were using or not? A. Well, I presume so.

Q. The instrument from which you made this copy was the form of a contract that they had used? A. It was a contract, and I simply copied it in blank off of this (indicating) contract.

Court adjourned.

Thursday morning, November 14th, 1902.

Henry Jones, recalled.

Cross-Examination

By Judge Read, resumed:

Q. I believe you say you were in the office of the Martin-Alexander Lumber Company? A. Yes, sir.

Q. You were the stenographer? A. Yes, sir.

Q. Your office was in their office? A. Yes, sir.

Q. How long had you been there with them? A. I went with them—it was either the first or the 15th of the November previous.

The Court: What year was that?

The Witness: I went to work for them, I think it
209 was, on November 1st or 15th, 1899.

Q. This entry was made in April, 1900? A. Yes, sir.

Q. Then you had been with them from November of the previous year up to this time? A. Yes, sir.

Q. When was it that Mr. Martin told you that he did not know whether they would buy the timber, or not, from you;

what was your language in regard to that? A. When we started to Camden to make the final entry?

Q. That was the time that conversation was had? A. Yes, sir.

Q. Was this proof in your handwriting, or who made it out, if you remember? (showing witness paper) A. That is not my handwriting.

Q. Whose is it, do you know? A. No, sir; I do not.

Q. Where was that made out? A. That was made out in the office at Camden.

Q. Do you know whether the answers were written there by one of the officers or not? A. Well, I should suppose so.

Q. I mean one of the officers of the Government Land Office? A. Yes, sir.

Q. It was not made out until you got to Camden? A. No, sir.

Q. It was, then, made out there? A. Yes, sir.

Q. I see in this statement of testimony of the claim-
210 ant—the one that I show you—the question is asked: "Question 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone? Answer. Chiefly for timber. Question 11. From what facts do you conclude that the land is chiefly valuable for timber or stone? Answer. The timber growing thereon. Question 12. What is the estimated market value of the timber standing upon this land? Answer. About four hundred dollars. Question 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself? Answer. No, to each. Question 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not for the use or benefit of any other person? Answer. I do. Question 15. Has any other person than yourself, or has any firm, corporation or association, any interest in the entry you are now making, or in the land, or in the timber thereon? Answer. No, to each. (signed) Henry Jones." At the time you made those statements, did you believe them to be true? A. Yes, sir.

Q. It was a true statem-nt? A. Yes, sir.

Redirect Examination

By Mr. Youmans:

Q. Mr. Read asked you something about the conversation that was had with Mr. Martin. I didn't exactly catch it. As

I understand it, the remark was made by Mr. Martin
211 about in these words: "Understand, we make no contract with you to buy the timber." A. Yes, sir.

Q. That was it? A. Yes, sir.

Q. The conversation simply consisted of a remark made by Mr. Martin? A. Let me correct you in this way: I don't know if Mr. Martin said "agreement," or "contract." I don't know the words exactly. I do remember that he told me: "Understand, Jones, we have no agreement—or no contract—with you to buy this timber when you come back."

The Court: The question is when that conversation took place.

The Witness: That conversation took place just before we started to Camden to make the final proof.

Q. You began to work for them in November, 1899? A. Yes, sir.

Q. Did you know of any other entries having been made prior to the time you made yours? A. As I stated yesterday, I saw one contract. The only contract that I saw was the one—and I knew of three others having been made.

Q. Who were they? A. Mr. Winslow and his wife, and Mr. Means and his wife.

Q. Who was Mr. Winslow? A. He held the same position that I did, before I came there. He was stenographer in the office.

Q. Who was Means? A. He was the general superintendent at the mill.

Q. He was also an employe of the Martin-Alexander
212 Lumber Company? A. Yes, sir.

Q. You knew of those entries being made: did you know of any other contract having been made for other entries? A. I could not say that I do. I could not say that, no sir. I beg your pardon—with the exception of this one contract, as I stated yesterday.

Q. Whose was that? A. That was Mr. Winslow's contract that I copied this from. I did this copying there, as I stated yesterday.

Q. Mr. Winslow's contract had the description of the land in it at the time you made the copy? A. Yes, sir.

Q. And Mr. Winslow was your predecessor: that is, he held the same position you held? A. Yes, sir.

Q. I want to ask you whether or not anything was said about homesteads before you made your entry. A. I believe I brought that up yesterday in regard to—at the time when I asked Mr. Martin and Mr. Copeland and Mr. Alexander—at the time I asked the gentlemen about whether this was regular, and all that. As I stated yesterday, at that time I

told them of the advertisement, and we knew that Mr. Neimeyer got into trouble about homestead lands; and the answer was made to me that that was a different thing altogether, and it was all regular.

Q. You did call their attention to the matter of homesteads? A. To the matter of Neimeyer getting into trouble about homestead lands.

Q. State whether or not anything was said to you
213 by Mr. Martin before you went to make the final proof as to investigating whether or not there were adverse claims against the lands which you contemplated proving up. A. No, sir; I don't remember that there was anything said to me.

Q. You were given money for your entry?—also for Gus Copeland's and George T. Colston's? A. Yes, sir.

Q. Are you acquainted with Gus Copeland's signature? A. No, sir, I cannot say as to that.

Mr. Youmans: Gentlemen, do you admit that that is Copeland's signature? (passing paper to Judge Read)

Judge Read: I don't know.

Q. Do you say that you never obtained Gus Copeland's receipt? A. I don't remember if I did or not.

Judge Read: All these matters were gone over yesterday by the District Attorney. He went through all these matters thoroughly—all these things.

Mr. Youmans: Some of them I asked about yesterday, and he didn't know, and I didn't know but he might have refreshed his memory in the mean time.

Q. You stated on yesterday, about the first of your cross-examination, that you expected to get a profit out of the land, and you would get the second growth of timber by your contract: you conveyed all the timber that was then growing on the land, Didn't you? A. Yes, sir.

Q. Have you made an estimate as to what length of time would elapse before you would come into the enjoyment of that second growth of timber? A. In that case there
214 I protested against signing this contract, and asked Mr. Martin and Mr. Alexander that a time limit be put on there to take that present growth of timber off, and they gave me, verbally, to understand that when the present growth of timber was taken off they would release the contract.

Q. That was the agreement on the outside, was it? A. Yes, sir, that was the verbal agreement.

Q. What about the agreement with reference to the right to use this land for tramways, railroads &c., for a term of 99 years? A. We verbally agreed that the release of the con-

tract was the release, so far as the cutting of the timber was concerned. The right for tramways was to continue for 99 years.

Q. Did you think that that right to continue for 99 years would have any effect in enhancing the value of that property, so far as you were concerned? A. As I understand the contract, they had 99 years to cut the timber—99 years would cover the second growth of timber for some time to come, and that was the reason I protested.

Q. Had you made any estimate of the time before that second growth of timber would come on for your benefit? A. Yes, sir; I figured all the way from twelve to fifteen years.

Q. You think that would raise a big tree? A. It would raise marketable lumber.

Q. Your enjoyment of this was put off for ten or twelve years? A. Yes, sir.

Q. You thought that a good tree might be grown in
215 ten or twelve years? A. That is, from the sapling that is too small to cut now. It gets up in ten or twelve years.

Q. That was carried by your contract, [as] it not—all the timber growing upon your land? A. We were getting out at that mill nothing less than eight or ten inches in diameter, and we cut nothing less than eight inches, and that was the understanding then.

Q. What was meant by the "present growth" of timber? A. It was my understanding, the present growing timber on the land, such timber that is in shape for logging at that time.

Q. And you were expecting to be put off in the enjoyment of that for that length of time? A. Yes, sir.

Q. Have you paid the taxes on the land? A. No, sir.

Judge Read. Why have you not paid the taxes?

The Witness. I have not paid the taxes for the reason that I wanted to see the outcome of this suit.

Judge Read. If the land was yours, and you were entitled to it, you wanted it?

The Witness. That is it exactly; and if not, I didn't want to pay the taxes and go to any expense on it.

Q. With regard to those notes: what did they contain? A. The ordinary form of a promissory note, and the memoranda at the bottom saying that the note was given as the purchase money for the described property—describing the land.

Q. The Colston note and the Copeland note contained the same provisions? A. Yes, sir.

216 Q. And the same memoranda in each? A. Yes, sir.

Recross-examination

By Judge Read.

Q. Was your land that you entered near to the mill? A. Yes, sir.

Q. Would they be likely to cut that timber sooner than they would other timber farther away? A. No, sir; not necessarily; no, sir.

Q. You agreed with them, however, that they would, as soon as they cut off the present growth of timber, then the contract you had made with them was to be released? A. Yes, sir.

Q. Whether that was sooner or later? A. I was given to understand that that was—Oh, it might be a couple of years, and it could be five years, until it was done.

Q. Anyhow, when that was done, then your contract was to be released? A. There was no time limit stated; we thought that it would run all the way from two to five years, and then it would be released.

Q. And under those circumstances you were willing to sign the contract? A. Yes, sir.

Q. You raised that objection to the contract when it was presented? A. Yes, sir.

Q. You spoke of the second growth of timber—you thought that would be valuable: would the fact that the property was near to Pike City give it any additional value in
217 your eyes? A. Yes, sir.

Q. Those two things mentioned, the location of the land, the second growth of timber—the fact that they were willing to make this agreement with you—induced you to make this contract with them? A. Yes, sir.

Q. And you thought that would be an investment, a good investment, for you? A. Yes, sir.

The Court. What objection did they make to putting this outside oral agreement into the written contract?

The Witness. There was nothing said about it. I spoke about it, and Mr. Martin simply said "that would be all right, Jones," and stated that "as soon as the present growth of timber is off, we will release the contract." That is all there is about it.

The Court. You just took his word instead of putting it in writing?

The Witness. Yes, sir.

Witness excused.

218 George T. Colston, a witness for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. What is your name? Answer. George T. Colston.

Q. Where do you live? A. Pike City, Pike County, Arkansas.

Q. What were you engaged in in 1899 and 1900? A. I was working in the blacksmith shop for the Martin-Alexander Lumber Company, at Pike City.

Q. State whether or not you made an entry of Public Lands? A. Yes, sir; I did.

Q. How did you come to make that entry? A. I don't know whether I can explain it satisfactorily or not.

Q. Go ahead and tell what occurred—what brought the matter to your attention? A. Mr. Means brought the matter before me, J. O. Means.

Q. Who was he? A. He was the cashier of the Martin-Alexander Lumber Company.

Q. State what was said.

Judge Read. I object to the conversation between him and Mr. Means.

The Court. I will hear Mr. Youmans upon it.

Mr. Youmans. I don't care to press that question.

Q. That was the first, then? A. Yes, sir.

Q. Now, what was the next thing? A. After I had talked with Mr. Means?

219 Q. Yes, sir. A. I went up with J. P. Copeland.

Q. How did you happen to go out with Mr. Copeland? A. Well, Mr. Means came there—

Q. You went out with Mr. Jim P. Copeland, the defendant here? A. Yes, sir.

Q. Where did you go? A. I went out to look at the piece of property.

Q. You and Mr. Copeland, alone? A. Yes, sir.

Q. What was said between you and Mr. Copeland on that trip? A. We went out to look up a piece of land I taken up, and he showed me over the piece of land, and I asked him about the process of taking up this land—I knew nothing about the law—and he told me that I could take it up under this stone and timber act, and told me that there was no contracts made with any one before hand; that I could get money from [—] I pleased to take up this land, provided there were no contracts made; and I asked him about this law on this, and he said he had letters from Mr. McRae, I believe it was, and it was some other prominent lawyers, too. I didn't see the letters. He told me under this stone and timber act

that it was all right, that we would be complying with the law in every respect.

Q. How did the matter of contracts come up with regard to it? A. Well, I think that Mr. Means had said something about it before hand, when he was talking with me at first, that had caused me to inquire about this business. I didn't want to go into anything that would be contrary to the law.

Q. With reference to what did you inquire about? A. It was about getting the money to buy the land with.

Q. How did that come up? What did that have to
220 do with it? A. I didn't have the money, and I had to borrow the money to take up the land, and I wanted to know if I was violating any laws about the money.

Q. Was anything said about the timber? A. I don't think there was, at that time. It may have been. I rather think he told me that I could sell the timber after I had taken up the land for enough money to pay for it, or more.

Q. He told you that at that time, did he? A. I think he did. I am not real sure that he did at that time. That is the best of my recollection.

Q. How did you get out there, riding horseback? A. Yes, sir.

Q. What was the necessity of him going? A. He went out to show me the land.

Q. Did you employ him to go? A. No, sir.

Q. Did he volunteer to go? A. From the appearance of everything he was in the employ of the company at that time.

Q. What did that have to do with it? A. I don't know. You will have to ask him about that.

Q. You don't know why it is he went out there with you? A. No, sir.

Q. You didn't employ him? A. No, sir.

Q. What was the next thing in regard to that?

The Court: Where did you get the money? From whom did you borrow it?

The Witness: From the Martin-Alexander Lumber
221 Company.

The Court: How came you to do that?

The Witness: I didn't have the money to buy the land with.

The Court: How did you come to go to them to get the money?

The Witness: Mr. Means told me to go to them.

Q. What was the next thing, when you had gone out with Mr. Copeland to examine the land? A. In a few days after that we went down to Camden.

Q. Who is "we"? A. I went in company with Mr. Henry Jones and Mr. Gus Copeland.

Q. Had you come together to go? A. They were coming at the same time I was.

Q. How did you find that out? A. Well, we all went out and went over the land some time before that.

Q. Who was with you at that time? A. Mr. Jones and Mr. Copeland.

Q. Anybody else? A. No, sir.

Q. Just you three? A. Yes, sir.

Q. Who gave you the description of the land, if anybody? A. Mr. Copeland gave me a paper with the description of the land on it.

Q. Mr. Jim P. Copeland? A. Yes, sir.

Q. What did you do at Camden? A. We made application for the land.

Q. Was that your application (showing witness paper) A. (after examining paper) There is one thing in this that
222 I don't remember hearing mentioned at all when I made application, and when the application was read over to me, but it may have been there.

Q. What was that? A. It was about that contract business there in question 13. It says: And that I have not "directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself." I don't remember that. I have given that a good deal of thought, but when that question was asked me it was something like this: that I had not made any agreement or contract to make any agreement.

Q. Do you mean any writing, singing any contract? A. That is the best of my recollection. I may be mistaken.

Q. That is the way you understand it? A. I say, to the best of my recollection. I would not be positive.

Q. That is your signature to the paper, George T. Colston? A. Yes, sir.

Q. As you remember it, it was explained to you in that way—that particular question? A. To the best of my recollection.

Mr. Youmans: We will consider this in.

Judge Read: I suppose so.

The paper referred to, and introduced, is in words and figures following, to-wit:

* * * * * * * * *

225 Mr. Youmans: I will state that this is similar to the affidavit that I read to you in the testimony of Mr. Jones yesterday, and contains the same things, with the ex-

ception of the name of the individual and the description of the land. The land is described as follows: the east half northwest quarter, and northwest quarter of northwest quarter, Section 17, Township 7 South of Range 24 West, and is sworn to before Charles T. Duke, Register.

Q. Did you get anything from the officers of the Land Office when you made that sworn statement—I mean, in the way of a paper? A. Yes, sir; I got a paper.

Q. What paper? A. It was for the advertisement of the land.

Q. What did you do with that? A. I turned it over to Mr. Harry Jones.

226 Q. Where did you turn it over to him? A. In Camden.

Q. Do you know what he did with it? A. No, sir.

Q. Who paid the expenses of that trip, Mr. Colston? A. Mr. Jones furnished the money for the expenses.

Q. And you were out nothing? A. No, sir.

Q. What about your time as an employe of the Martin-Alexander Lumber Company during your absence? A. I drawed my time. It went on just the same.

Q. What was the next thing that was done in reference to that entry? A. I don't know that there was anything done until we made final proof.

Q. Coming up to that point, then: what did you do then? A. Mr. Jones and Mr. Gus Copeland and me went down to Camden.

Q. How did you come to go? A. We were notified through the notice that was published at the time.

Q. Where did you start from? A. We started from Pike City.

Q. Was there any agreement among you as to when you should meet? A. I can't say that there was. We all knew the time.

Q. What did you do when you got there? A. We went to pay for the land.

Q. Where did you get the money? A. I got the money from Mr. Jones.

227 Q. Had you had any talk with anybody with reference to that? A. Not since that first time when we went down: what I have told you.

Q. Did you have any talk with Mr. Copeland about it? A. No, sir.

Q. Any with Mr. Alexander? A. No, sir.

Q. Any with Mr. Martin about it? A. No, sir.

Th Court: Who did you apply to to borrow the money?

The Witness: There was nothing said about the money, only what I said beforehand; and when we got to Camden, I think Mr. Jones told me that he had a check for the amount of money we all needed on the trip. I think we stopped at Gurdon and tried to get it cashed, and couldn't and in the hotel where we stopped Mr. Jones presented the note that was drawed up by the company for three hundred dollars, I think it was.

Q. Presented the note to whom? A. To me. I signed the note and he gave me three hundred dollars.

Q. What did you do then? A. I went to the Land Office and made the final proof and paid for the land and got the receiver's certificate.

Q. What did you do with it? A. I turned it over to Mr. Jones.

Q. Why did you turn it over to Mr. Jones? A. He asked me for it, and told me the company had requested him to take charge of it.

Q. Did he give you any reason why? A. I can't say that he did. I don't remember.

228 Q. You turned the note over to him also? A. Yes, sir.

Q. Do you know what Mr. Gus Copeland did on that occasion? A. No, sir; I do not.

Q. Did he sign the note that you saw? A. I don't remember whether I saw him sign the note or not.

Q. Did he get a receipt? A. Yes, sir.

Q. What did he do with his receipt? A. I didn't see him do anything.

Q. You gave your receipt to Mr. Jones because Mr. Jones said the company requested him to get it? A. Yes, sir.

Q. Do you know what the note contained? A. The amount of it?

Q. Yes, sir. A. It was just a plain note of hand, three hundred dollars.

Q. Was there anything else in the note? A. I don't think it specified anything only just for the amount of money.

Q. Then what did you do? A. We all came back to Pike City.

Q. Who paid the expenses of that trip? A. I never saw any money at all.

Q. Let me ask you to identify the receipt. Was that the receipt that you got? (paper shown witness) A. I suppose that it is.

Mr. Youmans: I introduce this receipt.

Judge Read: That is all right.

The receipt was then read to the jury in the words
229 and figures following, to-wit:

* * * * * * * * *

Q. What was the next thing in regard to that land? A. After we came back some three or four days, I don't remember the exact time, Mr. J. P. Copeland came down to the shop where I was at work and asked me to sign the note, or a contract, releasing my claim on the timber.

Q. Is that the contract? (showing paper to witness) A. That is it, to the best of my recollection.

Q. That is your signature there, is it? A. Yes, sir.

Mr. Youmans: I will introduce this.
Judge Read: Consider it in.

Contract dated the 27th of April, 1900, between Mr. Colston and the Martin-Alexander Lumber Company was then read in evidence in the words and figures following, to-wit:

* * * * * * * * *

232 Q. Who were your witnesses in that case? A. Mr. Harry Jones and Mr. Gus Copeland.

Q. You were the witnesses for them when they made their final proof? A. Yes, sir.

Q. State whether or not there was any description of the land in the note that you gave. A. No, sir. I would like to state one little thing that I left out, about when Mr. Copeland came to me in regard to the contract to sign. I at first was a little dilatory about signing it, and he remarked to me that all the company wanted was their money, and that I was with them at work, and they asked him to present me with the note,—I believe he was also a Notary Public at the time,—and if I didn't want to sign the note I could sell the timber and pay that part of the money that I borrowed from them.

Q. You mean, didn't want to sign the contract? A. Yes, sir.

Q. He said all the company wanted was the money? A. Yes, sir.

Q. And if you didn't want to sign it, you could sell the timber and pay off that part of the money? A. Yes, sir.

The Court. When did your note mature?
The Witness. I don't remember.

Q. Was the Martin-Alexander Lumber Company the only company in that section of country buying timber? A. At that time, so far as I know.

Cross-Examination

By Judge Read.

233 Q. He told you to sell the timber to anybody you wanted to? A. Yes, sir; he said they wanted their money.

Q. All they wanted was to get their money that they advanced, and if you didn't want to sell them the timber you could sell it to anybody else you wanted to, and pay them their money? A. That was what Uncle Jimmie said.

Q. That was after you got your final receipt from the Land Office? A. Yes, sir; some few days afterwards.

Q. He told you in that conversation, didn't he, that you had a perfect right to sell to anybody you wanted to, but if you wanted to sell to the company they would take the timber and cancel your note? A. I don't remember just what the conversation was. I remember what I said.

Q. You remember that if you did sign the contract that your note was to be cancelled? A. Yes, sir; when I asked him for the note he told me he would get it or see that it was cancelled.

Q. You stated in your examination-in-chief, when shown the original affidavit made by you, that you didn't know that there was anything in there about a contract, express or implied; that some one told you that that was a written contract, and you understood that was a written contract: where was that affidavit made? A. It was made in the Land Office at Camden.

Q. Do you know who prepared the affidavit—who swore you to the affidavit? A. The receiver, I suppose. The man that was working in the office.

234 Q. Then, if any one told you, it was the receiver? A. I don't say it was the receiver.

Q. Was it some one working in the office that told you that? A. No, sir. If you will let me, I will explain where I got my idea about it.

Q. I don't want your idea about it. When you went to Camden this affidavit was presented to you? A. Yes, sir; it was presented.

Q. It was made out there in the office? A. I suppose so. I don't know where it was made out.

Q. Did you read it [ober]? A. I don't know that I did. I stood right by the gentleman who did the writing, and looked over it as he did it.

Q. Who did read it? A. The receiver, I suppose—the man who was tending to the business there.

Q. You signed it and swore to it? A. Yes, sir.

Q. When you went to make your final payment and get your final receipt you had to sign another paper, didn't you? A. Yes, sir.

Q. State whether this is the paper you signed or not. (showing witness a paper) A. That is my signature.

Q. This paper contains a lot of questions that you have to answer, among others: "Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed? Answer. No. Question 8. What is the situation of this land, and
235 what is the nature of the soil, and what causes render the land unfit for cultivation? Answer. Hilly, rocky and unbroken. Question 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable. Answer. None. Question 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone? Answer. No. Valuable chiefly for timber. Question 11. From what facts do you conclude that the land is chiefly valuable for timber or stone? Answer. Timber growing thereon. Question 12. What is the estimated market value of the timber standing upon this land? Answer. Four hundred and sixty dollars. Question 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or part, to the benefit of any person except yourself? Answer. No to each. Question 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person? Answer. I do. Question 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon? Answer. No to each." Who wrote those answers in there for you? A. The man that attended to the business in the Land Office.

Q. Were they read over to you? A. Yes, sir.

236 Q. And that was signed and sworn to by you? A. Yes, sir.

Q. Were those facts that you stated there true at the time? A. I suppose so, or I would not have stated them.

Q. You believed that they were true at that time? A. Yes, sir.

Q. You say you thought the timber on that land was worth four hundred and sixty dollars. That is true, is it? A. Yes, sir.

Q. From the examination that you had made? A. Yes, sir.

Q. You had gone over this land more than once, hadn't you? A. Yes, sir; I had gone over it twice.

Q. You first went with Mr. Copeland [illegible] afterwards with Mr. Jones and Gus G. Copeland? A. Yes, sir.

Q. You got one hundred and twenty acres, I believe? A. Yes, sir.

Q. Did you state that Mr. Copeland told you that you had a right to borrow the money from anybody that you wanted to, to make this entry? A. Yes, sir.

Q. And that you had no right to make any contract with reference to the land or the timber, on it? A. I think that was about the words. Something about that. I don't remember just what the words were.

Q. You understood that you could not make any contract with reference to the sale of the land or the timber? A. He led me to believe that I could not make any writing.

Mr. Youmans. Which Copeland?

237 The Witness. Mr. J. P. Copeland, as I stated a while ago.

Q. What did he say about it? A. From the conversation we had about the land and the contract, he led me to believe that unless there was an agreement and a contract drawed up that it was no contract.

Q. Was that the only conversation you ever had with him on that subject? A. I think so.

Q. You never had any conversation with Mr. Martin or Mr. Alexander? A. No, sir.

Q. That was all the talk there was about a contract between you and Mr. Copeland? A. Yes, sir.

Q. Until you got your final receipt, and he came to you with the contract that you have referred to? A. That is all I remember about it.

Q. There was nothing said at any other time? A. Not that I remember of it.

Q. You signed your note for three hundred dollars at Camden? A. Yes, sir.

Q. And you understood, therefore, that you owed the Martin-Alexander Lumber Company three hundred dollars? A. Yes, sir.

Q. On that note? A. Why, yes, I understood I owed them that much on the note.

Q. Do you remember what interest the note bore? A. No, sir; I do not.

Q. It bore interest, didn't it? A. I don't remem-

238 ber whether it did or not.

Q. You don't remember your note—the length of time the note was to run? A. No, sir.

Q. Did it have a length of time to run? A. I rather think, to the best of my recollection, it was drawn up payable one day after date. I am not sure. That is my best recollection.

Q. Now, wasn't the note for six months? A. It probably might have been; I am not sure about it.

Q. It might have been six months. You are not certain about that? A. No, sir, I am not certain about whether there was any specified time.

Q. When Mr. Copeland presented you that timber contract to sign, that you have referred to, he told you at that time that you had a perfect right to sell that timber whenever you wanted to? A. Yes, sir.

Q. You didn't have to sell it to the Martin-Alexander Lumber Company, but if they wanted to get their money that you could sell it to some one else; so they got their money it was all right? A. It was something about that. I don't remember whether it was just them words.

Q. You volunteered a statement a moment ago that you hesitated to make that statement, and he said that to you? A. Yes, sir; or words to that effect.

Q. Those two conversations that you detailed between Mr. Copeland and yourself, when you first had a talk with him, in which he told you that you could borrow the money from anybody you wanted so you didn't make a contract for this
239 land, and the second, in which he presented you this contract, were the only conversations you had with him with reference to contracts? A. That is all I remember of.

Q. You never had any conversations with Mr. Copeland or Mr. Alexander on that subject? A. No, sir.

Redirect Examination

By Mr. Youmans.

Q. You say that he said to you when you first went out to examine the land, that if a contract was not drawn up it was not a contract? A. That led me to believe that, as I said a while ago, from the conversation.

Q. He came to you, after you had returned a day or two or three from the Land Office, after having made the final proof? A. Yes, sir.

Q. And presented a contract and said that you could sell the timber to some one else, if you wanted to, and get the money to pay that note? A. Yes, sir. When I hesitated about signing it he said the company wanted their money, and he said I could sell the timber to some one else if I wanted to.

Q. If it was a six months note it was not then due? A. No, sir; it would not have been due, if it had been a six months note.

Q. Where is that note? A. I don't know; I never have seen it.

Q. Has it been returned to you? A. No, sir.

240 Q. Have you ever demanded it? A. I asked Uncle Jimmie, when I signed the contract, to get the note for me, and he said he would get it or have it destroyed.

Q. You don't know what it contained as to the length of time? A. No, sir.

Q. Did he tell you who else you could sell the timber to on the land, besides the Martin-Alexander Lumber Company? A. No, sir.

Q. Was anybody else buying timber there besides the Martin-Alexander Lumber Company? A. No, sir.

The Court: How did it happen that he told you that a contract that was not drawn up would not amount to an agreement? How did that come up?

The Witness: I don't remember. We were discussing the stone and timber law, and I was asking him about it. I don't remember just how that came up. I was asking him about this law. He was a man that worked in the timber business there when this came up, and I thought that he knew.

Q. What did you expect to get out of this land under that contract? A. I expected to get the land.

Q. When you had sold it for ninety-nine years and given these parties the right to handle it? A. When I went into it I expected to get the land as soon as they cut the timber, and when they presented the contract I saw it was for ninety-nine years, and I just signed the note.

Q. What did you want the land for when the timber
241 was off of it? A. I thought it would be worth something in the future.

Q. What for? A. Well, I didn't know what might be developed.

Q. Have you paid the taxes on it? A. Yes, sir.

Q. You have paid the taxes on it? A. Yes, sir.

Recross-Examination

By Judge Read:

Q. You don't undertake to say what the conversation between you and Mr. Copeland, when you first had the conversation with him about the contract or agreement, was, do you? A. I have told you what I remember about it.

Q. You just say your impression was so and so about it: do you know whether he used the term "agreement," or "contract"? A. I have explained to you the best I can—the best I remember.

Q. I ask you, do you undertake to tell what Mr. Copeland said—you don't undertake to use his words? A. I told you I have explained it to the best of my knowledge. I have explained it a time or two.

Q. Didn't Mr. Copeland say to you that you could not make any agreement or contract with anybody with reference to this land, before you entered it? A. I just now told you that I had explained that the best I remember it.

Q. Then, you decline to answer the question. You state the impression made upon your mind was that you could not make a written contract: now, do you undertake to give, or can you give, the words Mr. Copeland used in talking with you on this subject? A. I do not know that I could give you the exact words.

Q. You came to that conclusion from what he said?
242 A. I told you a while ago, from the conversation we had about the stone and timber act he led me to believe that unless there was a contract written, or drawed up, that it was not a contract in law.

The Court: Was there anything said at that time you are now talking about, with reference to any verbal understanding about the disposition of this timber?

The Witness: I don't remember that there was.

Q. You had no verbal understanding with him as to what you did with the timber? A. No, sir.

Q. Or at any time before you went to Camden? A. No, sir.

Q. Or with any member of the company—either of these defendants? A. No, sir.

Q. You made no application for the loan of the money? A. No, sir.

Q. Neither to the company nor to any one of these defendants? A. No, sir.

And further the witness saith not.

243 Stephen Fuller, a witness called for the Government being first [dulys] sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Q. Your name is? A. Stephen Fuller.

Q. Where do you live? A. Pike County, Arkansas.

Q. Did you make an entry of public lands in Pike County? A. Yes sir.

Q. About when, do you remember? A. Well, sir, I suppose it was in February, sometime between the first and 20th.

Q. 1900? A. Yes sir.

Q. How did you come to make that entry? A. Well, I just,—how did I come to find out it could be entered, do you mean?

Q. Yes sir. A. I saw it advertised there,—where there was an advertisement and the publications of it,—what could

be taken up under stone and timber act, and I made some inquiries.

Q. Of whom? A. First, one of the boys and the other, and then I made some inquiries of Brother Copeland.

Q. Was that Jim P. Copeland? A. Yes sir.

Q. Why did you make inquiries of him? A. I thought he knew something about the land.

Q. What did he tell you? A. He told me there was land, up three, eight or nine miles that were vacant lands.

Q. What lands did he tell you? A. He told me there was some of the boys going up there in a few days, as well as I recollect to examine it.

244 Q. What boys were going up, did he say? A. There was a brother of mine, E. Y. Fuller, and Alvin Pry.

Q. Who else? A. George Cooper.

Q. Who else? A. Tom Roberts.

Q. Who else? A. Mittie Roberts. That is Tom Roberts' wife, and Mr. Cooper's wife.

Q. Who else? A. I don't know that there was anybody else. There was seven of us.

Q. What did you go for? A. To look at that land.

Q. Did Mr. Copeland go with you,—Jim P. Copeland? A. Yes, sir.

Q. Why did he go with you? A. Because we requested him to go and show us the land.

Q. How did you go? A. In a wagon.

Q. Whose wagon? A. I went in my brother's wagon. There was two wagons went and they sort of divided up in each one.

Q. What did you do them? A. We looked over the land.

Q. Did each one pick out a body of land? A. I could not tell you. I picked out a body.

Q. Where did you get the description? A. Brother Copeland. He knew how the land laid, in surveying, and he showed us the land.

Q. Who gave you the numbers? A. Brother Copeland.

245 Q. Then what did you do. A. In a few days after that we went to Camden.

Q. Who? A. Me and the crowd that was up there.

Q. All the same crowd? A. Yes sir.

Q. There were seven of you altogether? A. Yes sir.

Q. Did you have any further talk with Mr. Copeland before you went up? A. Yes sir, we talked together every day so far as that is concerned.

Q. I mean about this land. A. Nothing special, as I recollect of only we set a time to go down there.

Q. That was all the conversation there was? A. That was all the conversation I had with him at that time.

Q. I mean before you went out to make the application. A. Yes sir, that was all the time I talked with him before we got ready to start down.

Q. What was the next thing that occurred? A. We went down there.

Q. Who paid the expenses? A. Brother Copeland, I suppose, paid the expenses down there. That was the agreement when we started this morning.

Q. I asked you if you had any talk with him. A. About the land, I was talking about.

Q. You did have a talk with him about the expenses? A. Yes sir, when we got ready to start.

Q. Where was that conversation? A. It was there by the depot. I believe it was between the depot and the commissary.

246 Q. What was that conversation? A. Well, there was some of the boys didn't have any money to carry them down there and I had money enough to have carried me to there, but we told Brother Copeland to pay our expenses down there. I didn't know anything about, at that time, what the expenses would be.

Q. Why did you tell him what the expenses would be? A. And that we would have a settlement with him.

Q. If you had the money why did you tell him? A. I didn't know but what we would have other use for it.

Q. What interest did he have in it? A. I don't know what interest he had in it. He got the tickets, I suppose and paid for them. He got them, at least.

Q. What other use did you expect to have for money? A. I don't know what use. I didn't know what use I would have at that time. I know what use I put it to. I bought some clothes with it.

Q. After you got down there what did you do? A. We went in there,—I don't know what you call it,—and taken up this land.

The Court: You went into the land office?
The Witness: Yes sir, went into the land office.

Q. Did you make an application there? A. Yes sir.

Q. Was this paper that I showed you the application that you made? A. I could not tell you whether it is or not.

Q. You see your signature down there? A. Not until I can get my specs. I suppose that is it. At least, that is the way I write my name.

Mr. Youmans. That is considered in?
Mr. Read. That is all right.

* * * * * * * * *

248 Q. What was done after you got there and made this application? A. We went back home.

Q. Was there anything given you there? A. Yes sir, there was a receipt for publication, I suppose.

Q. A notice of publication? A. Yes sir.

Q. What did you do with that? A. I turned it over to Brother Copeland.

Q. Why did you do that? A. He agreed to have that published for us.

Q. Who paid for the publication of it? A. Brother Copeland.

Q. What was the next thing done with reference to this land? A. There was a time set then for the final proofs to be made. We went down there and made the final proof and paid the land out.

Q. Where did you get the money? A. We borrowed it from the Martin-Alexander Lumber Co.

Q. How did you do that? A. By giving a note.

249 Q. Where did you give the note? A. In Camden.

Q. Who had the money? A. I can tell you who deposited the money to me.

Q. Who? A. Brother Alexander.

Q. When did he deposit that money with you? A. On the day we made that final proof.

Q. Where? A. In the Ouachita Hotel.

Q. At Camden? A. Yes sir.

Q. Brother Alexander was there? A. Yes sir.

Q. How did he happen to go there? A. I don't know.

Q. How much did he have? A. He had $2800.,—I don't know how much he had, that is what he deposited with me.

The Court. Had you made any arrangement prior to that to get the money?

The Witness: When I got ready to start down there I wanted to know where the money was going to come from to pay out the land, and Brother Copeland told me he would see to the money. I told them I didn't have the money to take it up with.

The Court: And that is all that?

The Witness: Yes sir.

The Court: When was that?

The Witness: That was the morning we started up there.

The Court: When you went to pay the money to take up the land?

The Witness: Yes sir.

250 Q. Mr. Copeland told you that? A. That he said to us he would get the money.

[A.] That was the morning that you started down there? A. Yes sir.

Q. All seven of you were together again on that trip? A. Yes sir.

Q. E. Y. Fuller? A. Yes sir.

Q. Alvin Pry? A. Yes sir.

Q. Mr. Cooper? A. Yes sir.

Q. Roberts and his wife? A. Yes sir.

Q. And Mrs. Cooper? A. Yes sir.

Q. Who paid the expenses on that trip? A. Brother Copeland.

[—] Where did you meet Mr. Alexander down there? A. In the Ouachita Hotel.

Q. What conversation took place between you? A. I could not tell you. I was not the first one that saw Brother Copeland there. It was Mr. Roberts; we was at the Bennett Hotel and Mr. Roberts come up there and told me that Mr. Alexander was down [was down] at the hotel there and I went down there and we went upstairs where he was at, and he counted the money,—me and him counted the money there and we called the crowd in there. There was Thomas Roberts, I believe he was there before we called the other six in there and found the amount of money necessary to pay for the land.

Q. What land? All of it? A. Yes sir, the whole of it.

Q. All seven of you? A. Yes sir. I think I went
251 and got the crowd and signed up the notes and counted up the money there, or what it would take to pay for each one for the land, and the crowd that was with me, after that signed the notes. He told me I should put the money back in the box it was in and take it to the office and then after dinner all the men went along and took the money up there and turned it over to the fellow that attends to doing the work until we got ready to come in to make our final proof.

Q. When did you do that? A. I reckon it was right about 12-O'clock. I think it was.

Q. Who took charge of the money then? A. I could not tell you what his name was.

Q. You say you put it in the safe: do you mean to say you put it in the safe in the land office? A. Yes sir, he took it and put it in the safe. I had inquired of his name. It was Mr. Duke. We went to see about it,—but I don't think he was the man that attended to that money.

Q. You made your proof, did you? A. Yes sir.

Q. And you got your receipts? A. Yes sir.

Q. To whom was the money finally turned over there,—did you ever get hold of the money again? A. No sir, not after I put it in there.

Q. You put it in the safe first? A. Yes sir, after I gave it to him, I mean.

Q. They gave you your receipt then, did they? A. Yes sir.

Q. Is the paper I now show you, the receipt that was given to you? A. I don't know as I would know the receipt if I was to see it. I suppose it is, but this receipt I reckon was given after we had proven up. I reckon it was, as well as I recollect. I know after we had proven up, that he
252 taken the money out of the safe and counted the money, and there was a piece of the land that was contested or something, that there was a hundred dollars on the land that was not taken up,—a forty acre lot, I suppose that was not taken up. They returned that back to Mr. Alvin Pry. They counted the money there and gave these receipts, I suppose that is the way it was done. I never had the money my hands any more only that hundred dollars that they handed to me to hand to Mr. Pry.

The receipt of Mr. Stephen A. Fuller was offered and introduced as follows:

* * * * * * * * *

Q. What was done with the note that you signed? A. Well, sir, sometime after I taken up this land and gave that note.

Q. I mean at the hotel who got your note, Mr. Alexander? A. I carried that over to Mr. Alexander.

Q. What became of the notes of the others? A. They were all turned over.

Q. What was done with the receipts? A. I carried mine home with me.

Q. What did you do with them? A. We turned them over to Mr. Alexander next morning after we went home.

Q. Why? A. He made a request and I think the
253 receipts were all turned over to him to take back there and put in the desk and keep until he got mine; and I made a mistake with mine, and didn't give them to him and he took them all together back home to keep them.

Q. You had yours with you when you went home? A. Yes sir.

Q. You took yours to him the next morning? A. Yes sir.

Q. Why did you do that? A. I thought it would be safer there than me carrying it around. That was the reason I carried it down there because it would be safer there in the safe.

Q. These were taken because it would be safer for him to carry them than the owners? A. I don't know, that it was just his request. I don't know what they thought about it.

Q. He requested that the receipts be turned over to him? A. Yes sir, I think they were all turned over to him except that one.

Q. What was the next thing that occurred with regard to this land? A. I don't know that there was anything.

Q. Did you make any contract in reference to the timber on the land? A. Not until sometime after I got that receipt.

Q. How long after? A. I could not tell you that, some few days. Maybe a month, I don't know. I didn't keep any count of it and I don't recollect how long it was.

Q. Where is that contract? A. I don't know where the contract is.

Q. Who presented the contract, or did any one present it? A. To sign the timber contract, you mean?

254 Q. Yes sir. A. There was nobody that presented it, that I recollect.

Q. Did you ever sign one? A. I think I did. I think, as well now, as I recollect,—I suppose thinking ain't evidence,—but anyhow the boys was signing the timber contracts there,—selling timber or something of that kind and somebody, I think it was Brother Copeland, told me that I could pay for my note by signing the timber contract, at so much a thousand.

Q. When did he tell you that? A. I could not tell you how long it was.

Q. With reference to these receipts, was it before or afterwards? A. It was afterwards. I don't recollect now how long it was afterwards, but some bit.

Q. Some days, or some weeks or some months? A. It probably was not a month,—not longer than a month.

Q. He said that you could pay for your note by signing a contract? A. Yes sir; at 50 cents a thousand.

Q. What was done then? A. I signed it.

Q. Who had the contract? A. I don't know who had it. It was in Mr. Alexander's office.

Q. How did you happen to come to be in the office? A. I just went up there to see about it, to see if they were buying timber.

Q. Who prepared the contract? A. I don't know that. I don't know. I think the contract was printed, as well as I can recollect, just ready to fill out,—and I suppose Mr. Alexander or some of the clerks filled it out. I don't recollect. They were all sitting there in the room together.

255 Q. Did you give a timber contract for the land that you had entered? A. No sir, not for the land. I gave him a timber contract.

Q. The timber was growing on the land? A. Yes sir.

Q. It was on that land? A. Yes sir.

Q. What become of your note? A. Mr. Alexander wrote across that note, "cancelled", as well as I recollect, with red ink and I left it there.

Q. Why didn't you take it with you? A. He said he wanted it for future use.

Q. Did he give you that note? A. I never have,—I never have called for it. I think he assured me that the note would be destroyed or something of that kind, but I never called for it.

Q. I thought you said he wanted to keep it for future reference? A. I suppose that was to be placed in his book; I don't know what that was for.

Q. He assured you after he kept it for future reference he would destroy it? A. No sir; I think he said that the note would never come against me, no more.

Q. Did you acknowledge that contract that you signed? A. Put my name to it?

Q. Did you acknowledge it before a Notary Public? A. I don't recollect. I don't remember whether I did [—] not.

Cross-Examination

By Judge Read:

Q. You started in to enter this land, did you, understanding that you could borrow the money from the Martin-Alex-
256 ander Lumber Company? A. I suppose it was from the Martin-Alexander Lumber Co. I never made any inquiry from whom the money was to come.

Q. Did Copeland tell you he would get the money for you? A. He told me so,—he would see about it.

Q. You expected to borrow the money when you entered the land? A. Of course I did.

Q. Did you go out and examine the land? A. Yes, sir.

Q. Go to the land? A. Yes sir.

Q. Then you went out there? A. Yes sir.

Q. You spoke of this timber contract; had you made any other contract prior to that time with anybody? A. No sir.

Q. Had you talked to anybody about any contract of any kind? A. No sir.

Q. You were not in the employ of the Martin-Alexander Lumber Company? A. No sir.

Q. In what business were you engaged? A. I was teaming sometimes, sometimes farming, sometimes nothing.

Q. How long have you lived down there in that country? A. About 22 years.

Q. Your first attention was called to the fact that this land was to be entered, by seeing the advertisement in the papers? A. Yes sir.

Q. You inquired of several people about it, and finally went to Mr. Copeland? A. Yes sir, I inquired all I could. My brother had taken up some land under the same Act previous to that.

257 Q. What businesses had Mr. Copeland been in prior to that time? A. I don't know what he was in at that time. He had been a kind of a surveyor and purchaser of timber.

Q. He had been in the real estate business hadn't he? A. I suppose something of that kind.

Q. Do you know whether or not he was a man a great many people went to to get information about land? A. Everybody in the country went to him mighty nigh, and put a great deal of confidence in him knowing about the land.

Q. He knew all about the land,—how it laid and that was the reason you went to him? A. That was the reason I went.

Q. Did you have any conversation with Mr. Martin or Mr. Alexander? A. I never did have any in my life with him.

Q. Before you made these contracts with Mr. Alexander in his office? A. That timber contract?

[A.] That was the first time you had any conversation with him? A. That was the first time I mentioned anything of the sort to him.

Q. At the time you got your receipt, and up to the time you went to Mr. Alexander's office to sign the contract, were you under any obligation or promise or agreement of any kind to convey that lumber to any one.

Objected to.

Mr. Read: I want to ask him a specific fact. Of course it is upon them to prove that fact. We have a right to ask any witness whether that fact is true or not. Witnesses have been asked here about contracts or agreements. This witness had not made any agreement or contract of any kind and we think he is entitled to state it.

258 (To witness) Had you made any contract, agreement or promise of any kind to convey this land or sell any part of it or the timber on it? A. No sir, I hadn't.

Q. Then at the time you went to Mr. Alexander, were you free legally and morally to sell that land to anybody you wanted,—the timber on it? A. Of course I was.

Q. If anybody had offered you more than 50 cents, the price you had contracted, would you have sold it to them? A. I certainly would,—I would have sold it to them, for the best amount I could get for it.

Q. Had you ever sold any of your timber prior to that time to Mr. Copeland? A. Yes sir.

Q. What price did you get for that? A. 50 cents a thousand.

Q. That was the usual price in that neighborhood? A. Yes sir, as much as I knew of being paid.

Redirect Examination

By Mr. Youmans:

Q. Was anybody else in that neighborhood buying timber at that time except the Martin-Alexander Lumber Company? A. I don't think there was any right immediately in that neighborhood. Of course there was other mills around there that was buying timber.

Q. I am talking about right there w-ere your land was located? A. I don't know that there was any right in that place. Right in that neighborhood I don't think there was anybody else engaged in buying timber, except the Martin-Alexander Lumber Company.

Q. Did you go to anybody else to sell the timber to them? A. No sir, not prior I didn't.

Q. What do you mean by that? A. I never went
259 to hunt anybody else.

Q. You went to the Martin-Alexander Lumber Company? A. Yes sir.

Q. The fact that you owed them that note didn't have any effect on you to go to them? A. Not if I could have got more for my timber.

Q. You never tried anybody else? A. If anybody else had come along an- offered me more for it I would have sold it to him.

Q. You didn't go to anybody else? A. No sir, there was nobody else to go to right in that neighborhood.

Mr. Read: If they hadn't given you 50 cents for the timber would you have sold it to them? A. No sir, I would have sold it to the others.

The Court: How long was the note to run?

The Witness: It was to run six months.

The Court: How did you expect to pay it when it was due?

The Witness: I supposed I could sell the timber and pay it in that length of time, when I gave the note. I knew the timber was being sold so.

Mr. Read: Had you ever borrowed any money of the Martin-Alexander Lumber Company?

The Witness: Why, yes, I borrowed money along a little all my life.

Q. What I mean is, did you have credit up there; could you have borrowed that amount of money from anybody else? A. I don't know; I suppose I could; I didn't try, though.

The testimony of Stephen A. Fuller before the land office at Camden, dated the 25th of May, 1900 was offered and introduced in evidence in the words and figures following, to wit:

* * * * * * * * *

262 And further witness saith not.

Ezekiel Y. Fuller, a witness called for the Government
263 being first duly sworn testified as follows:

Direct Examination

By Mr. Youmans:

Q. What is your name? A. E. Y. Fuller.

Q. Where do you live? A. I live in Pike County.

Q. How long have you lived there? A. About six years.

Q. Did you ever make any entry of public lands in Pike County? A. Yes sir.

Q. When? A. About in 1899 I believe.

Q. How did you come to make that entry? A. Why I just heard that there was land that could be taken up that way.

Q. From whom did you hear it? A. I heard it from different parties, I don't know exactly now who all,—I heard it from Jim P. Copeland was one.

Q. Did you have any conversation with Mr. Copeland about it? A. Well, we talked some about it.

[A.] What was the conversation? A. He told me that I could take up that land under this Stone and Timber act.

Q. Was that all that he said? A. He said more, I suppose.

Q. I would like to have all that you remember of it. A. I told him that I would take it up if I could get the money. That was all.

Q. What did he say? A. He said I could get the money.

Q. Did he say from whom? A. No sir.

264 Q. What more did he say? A. I never said anything more at that time about it.

Q. The next time he said anything, when was that? A. The next time he come to me on the mill yard and told me that he wanted me to take my time and take some parties on the Government land for some parties to see it.

Q. Were you working for the Martin-Alexander Lumber Co. at that time? A. Yes sir.

Q. What were you doing? A. Hauling lumber.

Q. Did he say when he wanted you to take them up there? A. That was one evening, and he wanted me to come next morning.

Q. Did you go? A. Yes sir.

Q. Who was taken? A. Thomas Roberts, his wife, and Mr. Cooper and his wife, and Steve Fuller.

Q. That is your brother? A. Yes sir.

Q. Did Mr. Pry go? A. Yes sir, Mr. Pry was one. I believe that was all.

Q. There were seven in the party? A. Yes sir.

Q. Was Mr. Copeland along? A. Yes sir.

Q. Wouldn't that make eight? A. He didn't go with me.

Q. You, Pry, Cooper, his wife, and Roberts and his wife? A. Yes sir.

Q. And Mr. Copeland didn't go with you, you say? A. I think he rode his own horse. He didn't go in my wagon.

Q. But he was with the party? A. Yes sir.

265 Q. What did you do? A. We looked over some land.

Q. Did you have further conversation with him about it while you were up there? A. Not that day.

Q. The whole party took up some land? A. Yes sir.

Q. Then what did you do? A. We come on home and in two or three days,—I believe that was probably Friday evening,—and on Monday we came to Camden.

Q. How did you come to go to Camden? A. I believe we decided that up there on the land.

Q. You went to Camden? A. Yes sir.

Q. Did you make an application for some land? A. Yes, sir.

Q. Look at this paper and see if it is the application you made. A. (Taking the paper) Yes sir.

Q. Is that your signature? A. Yes sir.

Q. That is what you went to the land office for? A. I think it is.

Q. I don't want any supposing about it. A. That is the land.

Q. That is your signature? A. Yes sir.

Mr. Youmans: Just consider that in.

The application of the witness, on the same date as [as] the last witness, Feby. 28, 1900, for the N. 2 of the S.W. 4 and S.E. 4 of the S.W. 4. Section 22 and the N.E. 4 of the N.W. 4 of Section 27 in Township 6 S. Range number 25 W. containing 160 acres of land is considered in evidence.

266 Q Where were these lands located? A. Pike County.

Q. Then what did you do after you had made application? A. We went up in about sixty days.

Q. You went back home on that trip: who paid the expenses on that trip? A. On the first trip, I think Copeland.

Q. You went back again in sixty days to the land office? A. Yes, sir.

Q. The same party that went on the first trip? A. Yes sir.

Q. What did you do then? A. We paid out the land,—proved up.

Q. When you made the first trip did you get anything from the officers of the land office,—did you get a notice of publication? A. Yes sir.

Q. What did you do with it? A. Carried it home.

Q. What did you do with it when you got there? A. I gave mine to Brother Copeland, I believe, and he carried it to the printing office. I don't think I carried mine myself.

Q. What do you know about the others? A. I don't know anything about the others.

Q. Who paid for the notice,—the printing of it? A. I suppose he settled for it.

Q. Mr. Copeland? A. Yes sir.

Q. You went back to the land office in sixty days,—the whole party of you? A. Yes, sir.

267 Q. And you paid out the land? A. Yes sir.

Q. Where did you get the money? A. We borrowed it.

Q. From whom? A. I got what I got from S. A. Fuller.

Q. Did you make any arrangement with anybody with regard to that money before you went down there? A. No sir.

Q. How did you know the money was to go up there? A. Of course we had assurance of the money.

Q. Who assured you. A. Steve Fuller told me he would get it. I don't know what assurance he had. He told me the money would be all right.

Q. Was that all the talk you had of money? A. Yes sir.

Q. Did you have any conversation with Mr. Copeland about it? A. No sir.

Q. You had none with Mr. Copeland, at all, at any time, about the money? A. No sir.

Q. Nor about the expense money either? A. Not the first time, I don't think.

Q. At any time? A. I don't think I did.

Q. The money was paid there, was it, in the land office? A. Yes sir.

Q. Did you get a receipt? (Showing witness a paper) A. Why, I think I did.

Mr. Youmans: I will introduce the final proof and the receipt:

* * * * * * * * *

271 Q. What next transpired about this land? A. After we came home?

Q. Yes. [Q]. The next I heard about it,—Oh several days, —I can't tell now how long, but it was not very long,—I signed a kind of a timber contract I suppose for this money that we got.

Q. How did you come to sign it? A. Brother Copeland came around with it, I suppose some four or five or six days after we came back. Brother Copeland came around with a kind of blank contract to fill out for the money that this land cost, and I signed that.

Q. A timber contract? A. Yes sir.

Q. Conveying the timber on the land that you entered? A. Yes sir.

Q. Where were you when he brought it to you? A. I was in the mill yard.

Q. Had you signed a note at Camden for any money? A. Yes sir.

Q. What did he say about that note if anything? A. He never said anything about that. I knowed what it was for.

272 Q. I mean when Copeland came to you with this contract,—did he say anything then about the note that you had given at Camden? A. I think he did.

Q. What was it? A. He told me then to sign the contract, —I think he had the note with him,—that would cancel the note that I gave for the purchase money.

Q. Did he give you the note? [—] I think yes.—in the yard. I think I told him to just take it up and destroy it.

Q. Why didn't you destroy it right there? A. I told you I didn't recollect what went with that note. It was marked out.

Q. How? A. Right across it with red letters.

Q. But he took it, did he? A. I think he did.

Q. What did you do with the land office receipt that you got when you proved up and paid the money? A. I couldn't tell you now; I don't recollect.

Cross-Examination,

By Mr. Read:

Q. You signed that timber contract to bring the timber to the Martin-Alexander Lumber Co. did you? A. Yes sir.

Q. And that would take up the note that you had given? A. Yes sir.

Q. In other words, you say the timber on the land would pay off the land,—all your note? A. Yes sir.

Q. Had you made any contract or agreement before that time to do that? A. No sir.

273 Q. Had there been anything said about it? A. No sir.

Q. You had a perfect right at that time to sell to anybody you wanted to? A. I think I did.

Q. If any one had offered you more than the Martin-Alexander Lumber Co. offered you for it, you would have sold it to them? A. Yes sir.

Redirect Examination

By Mr. Youmans:

Q. What about the expenses of these two trips down there,—who paid them? A. The first time Copeland paid the fare.

Q. The second time who paid? A. I think I paid my own fare the second time.

Q. You think you did? A. I am confident I did.

Q. Were you ever repaid for that? A. No.

Q. Did you pay your hotel bill down there at Camden? A. The second time.

Q. Did anyone pay you back? A. No sir.

Q. Did your time run on with the mill company? A. No sir.

Q. That was deducted was it? A. Yes sir. It was not turned in. My time just stopped. There was nothing turned in.

Q. With regard to the first conversation you had with Mr. Copeland, I will ask you to refresh your recollection as to whether there was anything said about your wife taking up your land? A. Not at that time.

Q. Well, at any other time then? A. It seems that
274 it was a good while before that.—Oh, six or eight months before that we were talking and he said we could take it up.

Q. Was anything said about the money,—where it was to come from? A. Why, we didn't discuss the money question. I knowed I didn't have it.

Q. Did you tell him you didn't have it? A. I don't think I did.

The Court: Had you any knowledge at the time you took up this land, of any persons taking land up in the same way and selling it to the company?

The Witness: I had no knowledge of them selling. I had knowledge of them taking up the land.

Q. Did you have a knowledge of them making timber contracts such as you had made? A. I had none at that time, no sir.

Q. The date of your receipt is May 25th, 1900; it was a few days after that Mr. Copeland came to you with a contract to be signed? A. Yes sir, it was sometime about the first of June.

Q. 1900? A. Yes sir, 1900.

By Mr. Read:

[—] You remember what valuation was put on the timber on that land? A. When I entered it?

[A.] Yes sir. A. I think I valued it at about $300. or $350.

Q. Per acre? A. Yes sir.

(Noon recess)

275

1:30 o'clock P. M.

Questions by Mr. Youmans.

Q. Where was this land that you entered located—in what county? A. Pike County, Arkansas.

Q. What was the value of the timber on the land? A. Three dollars an acre.

Q. That would make four forties, or one hundred and sixty acres? A. I suppose so.

Q. What was the land worth without the timber? A. It is not worth anything. It cannot be to me.

Q. You think it is not worth anything at all without the timber? A. It would not be to me.

Q. You are acquainted with the value of lands in that country, are you not? A. Yes, sir.

Q. Do you say it is not worth anything without the timber? A. I don't think it would be worth anything. I don't think it would sell for anything.

Q. What did you do with that land? A. I sold it.

Q. To whom? A. To the Detroit Lumber Company.

Q. What did you get for it? A. Twenty-five dollars.

Q. Is that all it is worth? A. Yes, sir.

276 Q. You mean the Detroit Timber and Lumber Company? A. Yes, sir.

Q. Explain how that was. A. About the timber?

Judge Read. You were asked about your expenses to Camden,—I believe that you said you paid your own expenses the last time?

The Witness. Yes, sir.

Judge Read. The first time they were paid by some one for you?

The Witness. Yes, sir.

Judge Read. Did you explain that they would be charged to you on the books of the Martin-Alexander Lumber Company?

The Witness. They were charged.

Judge Read. Against your contract?

The Witness. Yes, sir.

Judge Read. When you were at Camden was there anything said about your expenses there?

The Witness. When we went down to Camden to pay the land out we gave notes that included expenses—the whole thing—the note.

Q. How much did you give a note for? A. Why, it was about, it seems to me—to strike me—about four hundred and thirty dollars.

And further the witness saith not.

277 Stephen A. Fuller, being recalled for the Government, testified as follows:

Direct Examination

By Mr. Youmans.

Q. What was the timber worth on the land that you entered? A. Well, I couldn't say exactly what it was worth. It was worth, I would suppose, two dollars and a half or three dollars an acre. I don't know. I never saw much of the timber estimated. I suppose it was worth two dollars and a half an acre.

Q. You entered one hundred and sixty acres, didn't you? A. Yes, sir.

Q. What was it worth without the timber? A. It wasn't worth very much; I suppose fifty or one hundred dollars. I don't think it was worth over that, if that much.

Q. Where was this land located—in what county? A. Pike county.

Q. Pike county, Arkansas? A. Yes, sir.

Questions by Judge Read.

Q. Is that land good grazing land? A. It has got grass growing on it—what you might call [—] for that country.

Q. You were asked about your expenses to Camden: you said, I believe, that they were paid by Mr. Copeland? A. Yes, sir.

Q. Was there any charge made against you for those expenses? A. Why, I suppose there was.

Q. Was that your understanding about it, that they were to be charged against you? A. Yes, sir; that is my

278 understanding.

Q. How were they to be charged? A. Just charged up as an open account.

Q. Did they keep an account with you at the mill? A. No, sir; I never worked at the mill; but I was serving them with timber, and so on, at the same time off of my deeded land.

Q. And the expenses were charged up against you there? A. Yes, sir.

Q. And included in your note? A. No, sir; I don't think it was. I think it just ran as an open account.

Q. What was the amount of the note that you gave? A. I could not tell you right at this time. I reckon it was four hundred dollars.

Q. Just the amount that it took to enter the land? A. Yes, sir; that is the best of my recollection about the note.

Q. Did you afterwards sell your land? A. Yes, sir.

Q. Who did you sell it to? A. I sold it to Mr. McDonald.

Q. You didn't sell it to him—didn't you sell it to the Detroit Timber and Lumber Company? A. I suppose he was working for that company.

Q. What did you get for it? A. I got forty dollars.

Q. That was over and above your timber contract? A. Yes, sir.

Q. Expenses and all? A. Yes, sir.

279 Questions by Mr. Youmans.

Q. You sold to the Detroit Timber and Lumber Company? A. Yes, sir.

Q. How did you come to sell to them? A. I needed the money, was the reason I sold the land to them.

Q. You say over and above your expenses and all: what did your expenses have to do with it? A. I got that over and above what the timber contract applied to.

Q. How was that? What connection was there between an account that the Martin-Alexander Company had against you and the transaction with you and the Detroit Timber and Lumber Company? A. I don't suppose they had anything to do with it.

Q. What do you mean by saying, then, you got that over and above your expenses? A. I got that for the land.

Q. What did the expenses have to do with it? A. I don't know as they had anything.

Q. What did you answer Judge Read and say you got that over and above your expenses for? A. That is what I suppose. I got that much money over and above defraying the expenses of the homestead in the first land.

Q. The Martin-Alexander Lumber Company had an account against you for the expenses? A. Yes, sir.

Q. How did you pay those expenses by selling to the Detroit Timber and Lumber Company? A. I didn't pay them expenses back there. That expense was done paid.

Q. When was that paid? A. I suppose when they
280 bought my timber. It was running as an open account.

Q. Would they still have that against you? A. If they do I don't know it. I think from what they said at the time I sold my land—

Q. Wasn't the contract that you made with them that you were to get so much a thousand for the timber? A. Yes, sir.

Q. That depended upon cutting off the timber, didn't it? A. When I sold the land I would consider it I sold the whole thing then, and that I had nothing more to do with it, because the timber had never been cut off the land.

Q. How did that settle the account that the Martin-Alexander Lumber Company had against you— A. If it was settled in the timber, wouldn't that settle it?

Q. Was it settled? A. Yes, sir; I think so.

Q. How? A. When the timber was cut.

Q. You say it wasn't cut yet. A. No, sir.

Q. Then, how was it settled? A. I couldn't tell you.

Q. You said in answer to Judge Read's question that it was settled: now, don't you know how it was settled? A. That is the best of my understanding about it. Of course I cannot explain it.

Q. If you were to pay that account, the account of money that had been advanced you and loaned you by the
281 Martin-Alexander Lumber Company, by the cutting of the timber off that land, and that timber has [has] not been cut, how is it that you have settled for those expenses? A. Whenever they have cut the timber.

Q. Then, it has not been settled? A. I would consider it settled in one sense. Whenever I sold the land I didn't think I had anything more to do with that part of it.

Q. With what part? A. That thing of the timber.

Q. You still owe the amount, don't you; it is charged against you? A. I suppose that timber will settle the whole thing.

Q. It is not settled up yet. With whom have you had any agreement that it will settle it? A. Just in that kind of a way.

Q. What kind of a way? That is exactly what I want to get at. How is it that you made a transaction with the Detroit Timber and Lumber Company settle a matter that you had with the Martin-Alexander Lumber Company: that is what I want to get at? A. I think when I sold them the timber that just marked out everything that was against me.

Q. Who marked it out? A. I think brother Alexander marked it out.

Q. What did brother Alexander have to do with the transaction that you had with the Detroit Timber and Lumber Company? A. We wasn't dealing with them. That was previous to that. It was way back there over a year.

Q. When was it brother Alexander wiped it out? A. I suppose it was some time about the time I sold the
282 timber.

Q. You sold the timber that was to be cut at fifty cents a thousand? A. That was the agreement.

Q. Had you measured the exact number of feet? A. No, sir; they had estimated it, I suppose.

Q. How could you wipe out anything when you had not either made the measurements or taken any estimate? A. Why, of course they estimated the timber, I suppose. I don't know for certain whether they did or not.

Q. Why didn't they give you a lump sum for it, and not tell you that they would give you fifty cents a thousand for it when it was cut? A. I don't know. They made that contract. That is what timber was selling at, fifty cents a thousand, of course. I didn't know anything about the business.

Q. Here is the point: you sold that timber at fifty cents a thousand, and it was to be applied on the amount of money that you say you borrowed from them? A. Yes, sir.

Q. As it was cut? A. Yes, sir; that is the way I suppose it was.

Q. It has not been cut to this day? A. No, sir.

Q. Now, how, then, did you settle that debt? A. I can't get into that—just how it was done. That is what I considered it, you know; that it was settled.

Q. When did you consider it: at the time you made the contract? A. When I sold the timber I considered it set-
283 tled; that would be when that timber was cut.

Q. Well, it was not settled, then, at that time? A. Well, estimated. They just stood open in an open account. I ain't never had the books examined.

Q. Nobody has made any claim against you for any amount? A. No, sir; not that I recollect. I don't suppose they have presented any account to me.

Q. Did they ever say anything to you about it? A. Nothing particular.

Q. Did they say anything to you about it? A. In selling this timber, or when?

Q. I am talking about your account. You say there was an account charged up against you: I want to know whether you have ever had a settlement in regard to it, or whether they have ever presented any account to you, or made any demand upon you? A. I cannot say that I ever had it in the way of a settlement—never called for it.

Q. You never have settled it? A. I considered it settled.

Q. I ask you—you transacted the business and you ought to know whether you settled it or not. A. That is the way I considered it.

Q. So that the matter is settled, notwithstanding the contract is made that you should have fifty cents a thousand for the timber when cut? A. That is the way I understand it.

Q. Of course the credits could not be applied until the timber was cut? A. I couldn't tell you.

Q. But you know you were to get fifty cents a thou-
284 sand when it was cut, and you could not get credit, and they could not apply it on your account, until it was cut? A. No, sir. I reckon they could tell how many feet there was on the land.

Q. Why didn't you make that kind of a contract? A. I took them to be men that would do what they said.

Q. Why did you not make that kind of a contract and not for fifty cents a thousand? A. I took them to be honorable men, and that they would do what is right about it.

Q. I am trying to get at the contract that you actually made. A. Yes, sir; that is all the contract.

Q. You consider it settled? A. Yes, sir.

Q. Notwithstanding the contract don't say so? A. I don't know what the contract says. I couldn't tell you all there was in the contract.

Judge Read: The contract will speak for itself.

The Witness: I reckon so.

Q. Where is the contract? A. I couldn't tell you.

Q. You never saw it? A. No, sir; not as I know of.

Q. When you gave Mr. McDonald the deed for the property, didn't you take up the contract? A. Why, no, sir; I never received any contract, only it was just my understanding that it was all settled up.

Q. You had sold the timber to the Martin-Alexander
285 Lumber Company—given them a contract for the timber—and your understanding was that that was to wipe out your indebtedness to them? A. Yes, sir.

Q. Then you owned title to the land after that? A. Yes, sir.

Q. And you sold that title that you had to the Detroit Timber and Lumber Company, through Mr. McDonald? A. Yes, sir.

Q. For forty dollars? A. Yes, sir.

Q. And your understanding was you settled the whole matter? A. Yes, sir; that is the way I figured it up.

The Court: When did you sell this land to the Detroit Lumber Company?

The Witness: Why it was something over a year after I had taken it up. I couldn't tell you. It was sometime in April or May.

Mr. Youmans: There is the deed.

Q. Was that the deed that you gave? A. I don't know until I get my specks. I couldn't see it. I think it is.

Q. You said you sold then, for forty dollars, didn't you? A. Yes, sir.

Judge Read: I see by glancing over this deed that you got $472.25.

The Witness: Yes, sir; I recollect that too, but there was another deed given before that calling for forty dollars, as well as I recollect.

Q. What is the necessity for two deeds? A. And then Mr. McDonald said that that was not right.

286 Judge Read: I don't think this is competent testimony.

Mr. Youmans: You brought it out yourself.

Judge Read: It was Mr. McDonald. He was the man that had that fixed up.

Mr. Youmans: If there is any objection to be made to this, I want to have it made. Do you want to object to the introduction of this?

Judge Read: I have no objections to it.

Q. This deed shows it was $472.25: You say that there was a former deed that you made for $40.00? A. Yes, sir.

Q. You say you only got forty dollars? A. That is what I got for the land.

Q. What does that mean, then, $472.25? A. I couldn't tell you anything about it, only they said the other was not right, and wanted to know if I would make that, and I told them it was immaterial to me, so far as that was concerned; but the other called for the amount of money that I got for the land. I don't know what they wanted it done that way for.

Mr. Youmans: I would like to introduce that in evidence.

Judge Read: I don't think it is competent. I don't think any of this conversation is competent, except to show he sold the land and got forty dollars.

Mr. Youmans: The question was asked as to the value of the land. That is what I recalled him for—and its location. Either one side or the other asked him the question, and I have forgotten now which, as to what he did with the land, and he said he sold it, and then Judge Read asked what was considered in that sale, or what was done in that sale, and he said
287 that wiped up all his indebtedness in regard to that land, and he said his expenses came in additionally.

Judge Read: I asked him if his contract did not cover all his expenses and what he owed the company.

Mr. Youmans: I do not recollect it exactly that way.

Objection sustained. Government excepts.

And further the witness saith not.

288 Henry Jones, a witness for the Government, being recalled, testified as follows:

Direct Examination

By Mr. Youmans:

Question. Where is this land that you entered situated, what county? Answer. Pike County.

Q. Arkansas? A. Yes, sir.

Q. What is the timber worth? A. The timber, as near as I could judge, would be worth about two dollars and a half an acre, as near as I can estimate.

Q. What was the land worth without the timber? A. The land was practically worth nothing without the timber.

Q. Had it any value outside of the timber? A. No, sir.

The Court: Didn't you state in your direct examination that you thought the land would be valuable without the timber?

The Witness: For the second growth timber, and its nearness to Pike City. It had a chance to become valuable.

Q. Had you ever had an offer for your land down there? A. I had a party write to me a few days ago.

Objected to.

Q. Have you had any offer prior to that time? A. I don't recollect that I ever had a direct offer for the land.

Q. You don't remember that you ever had a direct offer for it? A. No, sir.

Q. Do you regard the land now as worth anything with the timber off of it? A. I don't regard it as worth

289 anything, with the exception of the young growing timber on it, no, sir.

Q. Why was it, then, that you said you did regard the land as having a prospective value on account of its nearness to Pike City? A. I believe it has a chance to be of some value.

Q. If it has a chance has it not some value? A. You can put it that way.

The Court: That is, you think the chance is that it would be valuable?

The Witness: Yes, sir.

And further the witness saith not.

290 Thomas J. Clements, a witness for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. What is your name? Answer. Thomas J. Clements.

Q. Where do you live now? A. I live in Texas.

Q. Did you formerly live in Pike County in this State? A. Yes, sir.

Q. How long have you lived in Texas? [—] A little portion of two months. I am at Marr.

Q. Were you living in Pike county in the year 1899 or 1900? A. Yes, sir.

Q. State whether or not you made an entry of public lands while living in Pike County. A. I did.

Q. How did you come to make that entry? What brought it to your mind, or what was the first that occurred to you in reference to that? A. The first that I knew of the land—Mr. Copeland was the first man that spoke to me about it.

Q. Jim P. Copeland? A. Yes, sir.

Q. Give the conversation. A. I don't remember that I could quote the exact conversation.

Q. Give the substance of it. A. We were talking in regard to some land one day, and he asked me if I would like to take up some land, and he went ahead and explained the law to me.

291 Q. What did he call the law? A. The Timber and Stone act.

Q. What was his explanation? A. I don't know that I could give the explanation. He went ahead and told me about it, and I decided I would take it up.

Q. You knew if you took up land under that act you had to pay $2.50 an acre? A. Yes, sir.

Q. Was there anything said about the money to do that with? A. Yes, sir; I spoke about not having the money, and he said he could get me a loan of what money I needed.

Q. Did he say where he would get it? A. I don't remember it.

Q. Did you ask him any particulars of the length of time, rate of interest and such things? A. He said he could get it on reasonable interest.

Q. Was there anything else then said? A. I don't know as there was.

Q. What were you doing then? A. I was working for the Martin-Alexander Lumber Company, scaling logs.

Q. What was the next thing about this land: what did you and Mr. Copeland do in reference to that? A. It was some time after that. I don't recollect just how long it was. He told me that if I was still of the opinion of taking the land he would go out and look over it any time, and he would find a place to suit me.

Q. Did you employ him to go out with you? A. No, sir.

Q. What was he doing at that time? A. He was
292 working for the company, I think.

Q. And he told you if you were ready to go out you could go out and look at it? A. Yes, sir.

Q. Did you go? A. Yes, sir.

Q. You and Mr. Copeland by yourselves? A. Yes, sir; and I think John H. Wilson went with me.

Q. Anybody else? A. No, sir.

Q. You went out to look at the land, did you? A. Yes, sir.

Q. Then what? A. The next thing we went to Camden, I believe.

Q. Who? A. Mr. Copeland, Mr. Wilson and myself.

Q. What did you do there? A. We made our application there.

Q. Did you make an application? A. Yes, sir.

Q. Is the paper I now show you it? A. That is my signature.

Mr. Youmans. I will introduce this sworn statement dated June 9th, 1899.

The paper here referred to, and introduced, was in words and figures following, to-wit:

* * * * * * * * *

294 Q. Where was this land located? A. In Pike County.

Q. In this State? A. Yes, sir.

Q. State whether or not at the same time Mr. John H. Wilson made an application. A. He did.

Q. Do you know where his lands were located? A. They were right south of mine.

Q. Who was John H. Wilson? A. John H. Wilson was the timekeeper for the company at that time.

Q. Do you remember whether that was his signature or not? (showing witness paper) A. I am not familiar enough with his handwriting to tell. I suppose it is.

Q. You say it is the land immediately south of yours? A. I don't know whether his lies in that whole body south of mine or not. I think it joins me in about half—

Judge Read. Do you know his signature?

The Witness. I stated to him that I didn't know his signature enough to state whether it was his signature, but I suppose it was.

Q. He made an entry at the same time you did? A. Yes, sir.

Q. And the land was situated just south of yours in Pike county? A. Yes, sir.

Q. Did Mr. Copeland make an entry at the same time.

295 Jim P. Copeland? A. Yes, sir.

Q. Where is he entry located? A. I can't remember the numbers of it.

Q. With reference to yours? A. I think his was east of mine.

Q. In Pike county? A. Yes, sir.

Q. Do you know his signature? A. That (referring to paper) resembles his handwriting. I couldn't swear to his signature unless I would see him write it.

Q. Have you ever seen his signature? A. Yes, sir; a good many times.

Q. And still you say you don't know it? A. Yes, sir.

Q. Do you think you could recognize it if you saw it? A. That (referring to paper) looks like his signature, and I have seen it frequently.

The Court. Did you see him sign that same paper at the same time you entered that land?

The Witness. I don't remember that I was in the room at the time that he signed it.

The Court. You don't know whether that is his signature or not?

The Witness. I couldn't say positive.

The Court. What is your best judgment about it?

The Witness. I would say that it was his signature.

The Court. Do you want to object to that?

Judge Read. No, sir.

Mr. Youmans. Let the statement go in. It is dated June 1st, 1899.

296 The statement of Jim P. Copeland, of date June 1, 1899, introduced in evidence, is in words and figures following:

* * * * * * * * *

297 Mr. Youmans: It is the same as the others with the exception of the name of Jim P. Copeland.

Q. That land was situated also in Pike County, Arkansas? A. Yes, sir.

Q. You went down there together: what was given you there, if anything, after you made those affidavits, by the officers? A. Nothing was given to us but our receipts.

Q. They didn't give you the receipts the first time, did they? A. No, sir; I don't believe they did.

Q. Did they give you anything else? Didn't they give you a notice for publication? A. I don't remember.

Q. Do you know whether they gave Mr. Copeland any or not? A. I suppose they did; I couldn't say for sure.

Q. Did they give him your notice for publication? A. Not that I know of.

Q. Was there any notice published in regard to your entry? A. Yes, sir; there was. We had a talk about that.

298 Q. What was said about it? A. He asked me what about it, and he said he would see the printer about it, and see what arrangements could be made about it, and whatever the charge was he would charge me my pro rata on.

Q. How much of it? Where was it? Was it a personal loan of his to you? A. He didn't say so to me. I suppose it was the company.

Q. Why did you think it was the company that made the charge? A. I don't know, except that he said he would charge it up, and he said he was working for the company at that time.

Q. You had nothing to do with the company? A. No, sir.

Q. All your business had been with Copeland? A. Yes, sir.

Q. Why should the company charge the money to you? A. I don't know why that was.

Q. What was the next thing done with reference to those entries? A. I don't remember that there was anything.

Q. Did you make any other trip to Camden? A. Yes, sir.

Q. Who went, do you remember? A. When we went down to make our final proof, I went alone at that time.

Q. Did you have any witnesses? A. Yes, sir; there was a good many witnesses went, but the majority went on Saturday, and I went on the Monday following.

299 Q. Who all was there when you got there? A. I don't remember who all. There was quite a lot of us; myself, Mr. Copeland and Mr. Scott, I think.

Q. John H. Wilson was one, was he? A. I think he was there.

Q. Was Mr. Copeland, Jim P. Copeland? A. Yes, sir.

Q. Was Mr. Robbie J. Hughes there? A. Yes, sir.

Q. Was Robert Gregory there? A. Yes, sir.

Q. Was Martha Gregory there? A. Yes, sir.

Q. Was Archibald J. Winslow there? A. No, sir.

Q. Was there anybody else that you can think up? A. I rather think John Scott was there.

Q. What were these different persons there, if you know, for? A. They were there to make entries, I believe, or to make an application.

Q. You were there for the purpose of proving up? A. Yes, sir.

Q. And others of the party were there for the purpose of making applications? A. Yes, sir.

Q. What did you do there? A. Well, we paid for our land.

Q. Did you pay for it? A. I did.

Q. Where did you get the money? A. From Mr.

300 Copeland.

Q. Where? A. In Camden.

Q. How much did you get? A. I don't remember the exact amount.

Q. Did you sign a note for it? A. Yes, sir.

Q. Where? A. There in Camden.

Q. Did you get a receipt for the money you paid in at the Land Office? A. Yes, sir.

Q. Is that the receipt? (showing witness paper) A. Yes.

Mr. Youmans. I introduce this receipt, dated August 22, 1899.

The instrument here introduced, is in words and figures following, to-wit:

* * * * * * * * *

301 Q. Who was Robbie J. Hughes that was there? A. She was the wife of Mr. Hughes. I forget his name now.

Q. Was it W. P.? A. I think it was. He goes by the names of Dad Hughes.

Q. What does he do? A. He was not there.

Q. What did he do when he was home? A. He worked for the lumber yard.

Q. For the martin-Alexander Lumber Company? A. Yes, sir.

Q. What did Archibald G. Winslow do? A. He was stenographer.

Q. You got your receipt or another person got your receipt for you? A. I suppose Mr. Copeland and Mr. Wilson got their receipts.

Q. Was Mr. Wilson there? A. Yes, sir.

Q. What did you do with your receipt? A. I taken it home with me.

Q. Did you keep it all the time? A. I kept it until I delivered it back for my patent.

Q. Did you go after the patent yourself, to the Land Office? A. Yes, sir.

Q. Did you get anybody else's patent? A. Yes, sir.

Q. Who? A. I don't remember now who all it was. I got five or six.

Q. Did you get Mr. Wilson's patent? A. Yes, sir.

302 Q. How did you happen to get his? A. I got an order from him for it.

Q. Where did you get the paper? A. He sent it to me.

Q. By whom? A. By Mr. Martin.

Q. The defendant here? A. Yes, sir; and the letter with it.

Q. Where did Mr. Wilson live at that time? A. He was at Chicago at that time.

Q. Had he been working for the company? A. Yes, sir.

Q. What was he doing there? A. He was timekeeper.

Q. Did you make any contract for the timber on this land you entered? A. I did; yes, sir.

Q. Is that the contract? (showing witness paper) A. Yes, sir.

Q. How long after you had proved up and gotten your receipt did you make this contract? A. I don't remember the exact time it was. Possibly two or three days. I don't remember exactly.

Q. After you had gotten your final receipt? A. Yes, sir.

Q. Your final receipt bears date August 22, 1899—is that the time of it? A. Somewheres about that time. I couldn't say for sure.

Q. This agreement purports to have been entered into on the 14th day of April, 1900. A. Ain't that 1901.

303 Q. No, sir; it is 1899. That receipt purports to have been given August 22, 1899. This contract purports to have been made on the 14th day of the following April. A. I don't remember. I couldn't say about that, how that is. I don't remember. It seems like to me now it was just a few days.

Q. After you had come back from Camden? A. Yes, sir; it seems so.

Q. State, now, the circumstances under which you came to make that contract. A. Well, Mr. Copeland asked me, after I came back, if I wanted to sell my timber after I had paid off and got my receipt. I told him I supposed so. And he said that he would buy it—that is, the company would buy it—at fifty cents a thousand. In other words, they would cancel my note for the timber on the place.

Q. Cancel your note for the timber? A. Yes, sir.

Q. Was the note given to you? A. No, sir; I never did get the note.

Q. What became of it? A. The note was cancelled when I signed the contract, and was left in the office.

Q. Why was it left in the office? A. Well, I was busy at the time, and he remarked that I could get the note at any time. I didn't care anything about it.

Q. Who cancelled it? A. I don't recollect which one it was. It was either Mr. Martin or Mr. Alexander.

304 Mr. Youmans: We introduce this contract dated April 14, 1900, for the north half of the southwest quarter and north half of the southeast quarter of Section 18, in Township 7 South of Range 24 west.

The contract here introduced in evidence is the same form of contract first introduced in the testimony of Henry Jones, and is in words and figures following, to-wit:

* * * * * * * * *

306 Mr. Hemingway: Has it been recorded in Pike county, Arkansas?

Mr. Youmans: Yes, sir.

Mr. Hemingway: What is the date of the recording?

Mr. Youmans: The 28th day of September, 1900.

307 Q. What was the timber on the land worth at the time you sold it? A. I don't know what it was really worth, or estimated, you know.

Q. You made the estimate? A. I know but very little of estimating, really; I don't know how to make estimates. Mr. Copeland made that estimate.

Q. I am asking you what you think the timber was worth—he gave you fifty cents a thousand? A. On estimate.

Q. How many thousand did he estimate it? A. He estimated about 800,000, and the stipulated price was fifty cents.

Q. What was the value of the land without the timber? A. I suppose it was worth a dollar.

Q. And you got about one hundred and sixty acres? A. Yes, sir; about that.

Judge Read. You regarded your land as worth a dollar an acre, fair market value for the land? A. Yes, sir.

Judge Read: Have you paid taxes on the land? A. Yes, sir.

The Court: What is it worth a dollar for?

The Witness. It has some good oak timber on it.

The Court. You sold the timber.

The Witness. My pine timber is sold, and my contract is released and it is mine now.

Judge Read. It has some oak timber on it: what is the land fit for without the timber?

The Witness. It is good pasturage land. There is some talk of asphalt and oil in that district now. That land is worth something.

308 Q. Worth something on account of the oil? A. Yes, sir. At that time I could have gotten seventy-five cents an acre for it.

Q. Your contract provided that you "bargained, sold and conveyed unto the said Martin-Alexander Lumber Company, the purchaser aforesaid, all of the timber and trees now standing and growing or being upon" the land therein described. You say there is timber left on there? A. There is some Oak timber, tie timber mostly.

Q. You say that was not conveyed by this contract? A. It was not conveyed?

Q. Yes, sir. A. No, sir. I mean by that, it was not cut off.

Q. Didn't you sell it in this contract?

Judge Read. He said that contract has been released.

The Witness. There is no contract against my timber at all.

Q. That has been released? A. Yes, sir.

Q. So that there is some timber on the land? A. Yes, sir.

Q. So that the timber gives it value? A. Yes, sir.

Q. To what extent? A. I could not tell you exactly.

Q. It is mostly oak timber? A. Yes, sir; mostly oak.

Cross-Examination

By Judge Read.

Q. The timber paid you out, then, under your contract? A. Yes, sir.

309 Q. When you went down there to Camden you gave a note, you say, for the money: you understood that money came from the Martin-Alexander Lumber Company? A. Yes, sir.

Q. That is where you expected to get the money from? A. Yes, sir.

Q. Had you borrowed money to any extent from them before that, or have you since? A. Yes, sir; I borrowed money from them several times, some little amounts. They went my security for me and paid for me three hundred and twenty-five dollars.

Q. Was that on a timber contract? A. No, sir; that was mules I bought.

Q. Then they had extended you credit before this time? A. Yes, sir.

Q. Did the note bear interest? A. Yes, sir; I think so.

Q. And you included in your note expenses, or the expenses that had been paid for you? A. The expenses that was paid out for me were charged to my account. I had an account regularly with them all the time.

Q. What were your expenses, do you remember? A. No, sir.

Q. You took some other orders down there for parties for patents, didn't you, besides this for Wilson? A. Yes, sir.

Q. Who were they, do you remember? A. I don't remember them all unless they would be called over.

Q. Were there several of them? A. There were
310 five or six of them, something like that. I don't remember.

Q. You got Mr. Copeland's patent? A. Yes, sir.

Q. Did you have orders from these parties for those patents? A. Yes, sir.

Q. You were a scaler there, weren't you? A. Yes, sir.

Q. What were your duties with reference to scaling lumber? A. Scaling logs, do you mean?

Q. Yes, sir. A. My duties were to keep track of the timber that was reported to me by the woods foreman, and also to keep the teamsters that would haul it—keep their accounts correct, and make a report of it once a week.

Q. Do I understand you: keep an account of the timber that was cut off of each quarter section of land: when they reported to you they reported to you whose timber it was? A. Yes, sir.

Q. And then you reported that to whom? A. To the office.

Q. Did you have any instructions as to keeping an account of any man's timber that was cut and brought to the mill? A. Yes, sir.

Q. Whether it came off of this timber and stone land or other land? A. Yes, sir. There was quite a while I was joint scaler between the Martin-Alexander Lumber Company and the Smithton Lumber Company, and I had to keep that separate; their timber and other timber that they bought from other parties, I kept a correct account of.

311 Q. Your instructions were to keep an account of the amount of timber cut from each man's tract of land? A. Yes, sir.

Q. And you reported that to the officer? A. Yes, sir; the woods foreman reported to me and I reported to the office.

Q. You stated that you still own your land? A. Yes, sir.

Q. Do you know the land that Harry Jones owns there? A. Yes, sir.

Q. How does that compare in value, so far as your land is concerned? A. I suppose it would be as good, probably better; it is somewhere nearer town than I am.

Q. You regard that land as valuable as your land? A. Fully as much so.

Q. Do you know what that land is assessed at up there now? A. I think the last assessment was two dollars an acre.

Q. That is with the timber off of it? A. The first assessment was $2.50, and the last assessment was two dollars, if I am not mistaken.

Q. With the timber off? A. Yes, with the timber cut off; that is what I mean there. I don't know what the rest of the land was given in at.

Q. You know that you were assessed with the timber off at two dollars an acre? A. Yes, sir.

Q. You spoke of this Smithton Land—do you know how must they had? A. I don't know exactly; I think it was about seven thousand acres.

312 Q. That the receiver had? A. Yes, sir.

The Court: What receiver?

Judge Read: The receiver of the Smithton Lumber Company.

Q. Do you know what became of that land, the Smithton Lumber Company's land?

Objected to.

Judge Read: I want to show that that land came into the possession of the Martin-Alexander Lumber Company, seven thousand acres that they had there. I want to show further that they paid these parties who entered this land the same price they paid for timber to anybody else.

Q. Seven thousand acres they had? A. I think that was something like what they owned there.

Q. Do you know of your own knowledge what price they were paying for that timber? A. Fifty cents per 'housand.

Q. Do you know how it was paid for? A. I don't know.

Q. You don't know anything about the contract between them? A. No, sir.

The Court: How do you know what they were paying for it?

The Witness: I heard them say time and again.

The Court: Who say?

The Witness: Both of the companies, they were paying fifty cents per thousand, and also Mr. Price, who was in charge of Mr. Woodson's business.

Q. There was other timber land down there that was bought by the Martin-Alexander Lumber Company, or
313 that you were directed to scale, from people that lived around there that would not enter under the Timber and Stone act? A. Yes, sir.

Q. From your information can you tell what the market price was for timber down there, bought as this timber was bought, by the stumpage? A. I never knew of them paying over fifty cents for timber.

Q. That is the highest price you ever knew of them paying? A. That is the highest price I ever booked.

Q. You spoke of this agreement that you made with Mr. Copeland, that you signed there, and which has been read in evidence, prior to the time you got your final receipt for this land: did you ever have, or was there any agreement ever made, between you and Mr. Copeland, or either one of these defendants, with reference to the timber on that land, or anything connected with it at all? A. No, sir.

Q. The first conversation with reference to the timber, or sale of any part of the land, was after you had gotten your final receipt? A. Yes, sir.

Questions by Mr. Youmans:

Q. You say that you kept an account of the timber cut from each separate tract of land? A. I turned in my report once a week.

Q. You did that regardless of whether the timber had been bought outright, or whether it had been bought at fifty cents a thousand, didn't you? A. Yes, sir; that was my business—no matter who they bought from, if they bought it in bulk I stated from whose land it was.

314 Q. They kept an account of the timber cut from land of which the timber had been bought in bulk, just the same as if it had been bought by the thousand? A. I suppose so. That is the way I turned it in to the office. I don't know anything about their books.

And further the witness saith not.

315 Emmett S. Keebaugh, a witness called for the Government, being duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. Where do you live? Answer. Pike City, Arkansas.

Q. Where did you live during the year 1900? A. In Pike City.

Q. How long had you lived there before that time? A. Since January, 1899.

Q. What is your occupation? A. Up to the first of August of this year I was employed by the lumber company.

Q. What lumber company? A. The Pike City Lumber Company.

Q. Were you ever employed by the Martin-Alexander Lumber Company? A. Yes, sir.

Q. How long? A. From the time of my going to Pike City, in January, 1899, until they sold to the Detroit Timber and Lumber Company.

Q. Did you ever make an entry of the Public Land while you were there? A. Yes, sir.

Q. While you were in the employ of the Martin-Alexander Lumber Company? A. Yes, sir.

Q. Of land located in Pike county? A. Yes, sir. [A.
316 Yes, sir.]

Q. How did you come to make an entry? I mean by that, what was it that brought it to your attention? A. It was brought to my attention by the fact that a number of people were making those entries.

Q. What people? A. The citizens of the town.

Q. Can you name any of them? A. Yes, sir; I know most of them, I suppose. I know some of them. I suppose some of them were afterwards and some just before me, but who had gone before me I cannot say.

Q. Were they employes of the company? A. Some of them were. Outside parties I don't know about.

Q. That was the first that brought it to your attention? A. Yes, sir.

Q. The fact of seeing notices in the paper? A. No, sir; the first of it was in conversations with people who had made the entries.

Q. Did you have any conversation with Mr. Martin or Mr. Alexander, or Mr. Copeland with reference to making the entry? A. I had a conversation with Mr. Copeland.

Q. What was that conversation? A. I don't know that I could give it to you or not. If you want the substance of it, it was that the lands were there and were open for entry, and could be entered under that Timber and Stone act, and that it was a good proposition, for people to go and take up that land.

Q. Did he explain to you how it was a good proposition? A. No, sir; except the land would be valuable. That was my understanding of it.

317 The Court. Did you go to him or he to you first?

The Witness. I don't know as I could state positive about that. I was in the office all the time he was there. Whether he approached me first on it or not I don't remember that clearly. No, sir.

Q. You say that you understood that the land would be valuable: for what did you understand that it would be valuable? Why? A. For the timber that was on it.

Q. Anything else? A. And for the land itself.

Q. Did you make an investigation of the land? A. Yes, sir.

Q. Did you look at it? A. Yes, sir.

Q. Did you examine the land that you wanted to enter? A. Yes, sir; I went over that land.

Q. What were those lands worth at that time, the particular tract that you afterwards entered? A. I don't know that I could give you a positive valuation on it; but they were worth more than the Government asked for it.

Q. The Government asked $2.50 an acre? A. Yes, sir.

Q. Was it simply on account of the timber? Were the lands worth anything without the timber? A. Some of them were.

Q. I am talking about the particular lands you entered. A. Yes, sir.

Q. For what purpose? A. It could have been used as grazing land, and probably could have been sold around in
318 that country for grazing purposes.

Q. Did you make that application? (showing witness paper dated February 15, 1900) A. Yes, sir; that is my signature.

Q. You say that it is worth more than $2.50 an acre: have you any idea of how much more? A. No, sir; I couldn't tell you how much more it would be.

Q. These lands were located in Pike County, Arkansas, were they? A. Yes, sir.

Mr. Youmans. I desire that this paper be considered in evidence.

The paper here introduced is in words and figures following, to-wit:

* * * * * * * * *

319 Q. They were located in Pike County, Arkansas, were they? A. Yes, sir.

Q. You went to Camden to make this entry? A. Yes, sir.

Q. Did anybody go with you? A. Yes, sir.

Q. Who? A. I don't remember who all.

Q. Give me the names of all you can remember. A. I think the first time I went to Camden Mr. J. P. Copeland was along, and Mr. C. W. Fuller, and Forrest Patterson and B. F.
320 Patterson and his brother J. S. Patterson.

Q. Anybody else? A. Henry P. Hughes. I think those were the people who went the first time I went.

Q. Who went with you when you examined the land? A. The same parties.

Q. Who took you out there? A. We went out with the wagon, I think.

Q. Did Mr. Copeland go with you? A. Yes, sir.

Q. For what purpose did he go with you? A. For the purpose of showing the land, as he was better informed than we were as to the territory, and could drive through that country better than we could.

Q. Who paid for the conveyance to go out? A. I don't know.

Question by the Court:

Q. Were those men employes of the company, and if so, who and in what capacity? A. I believe they were all employes at that time.

Q. Did you know at the time you and Mr. Copeland first had the conversation about this, that employes were entering the land and selling the timber to the company? A. I knew that employes had entered the land during the time.

Q. And sold it to the company? A. Not that they had sold it to the company.

Q. What is your position in the office? A. At that
321 time, you might say chief office boy, general clerk.

Q. You kept the books? A. No, sir.

Q. What do you mean? A. They had what they called a sales department. They sold their lumber by correspondence, and myself, in connection with Mr. Harry Jones, who was their stenographer, had the work of getting out that correspondence. That constituted the sales department.

Questions by Mr. Youmans:

Q. You went down February 15th, 1900, and made this application, and all those parties who had gone out on the land with you, went down with you? A. Yes, sir.

Q. Who paid your expenses to Camden? A. I believe Mr. Copeland paid the expenses at that time.

Q. Do you know whether he paid the expenses of the remainder of the party? A. No, sir; I do not.

Q. Did he make an entry at that time? A. Mr. J. P. Copeland?

Q. Yes, sir. A. I don't know, sir. I don't remember.

Q. You came back then. Did the officers of the Land Office give you anything? A. I believe they did; yes, sir.

Q. What was it? A. If I remember rightly it was a notice of the application.

322 Q. Notice of publication? A. Yes, sir.

Q. What did you do with that? A. I believe I gave it to Mr. Copeland.

Q. Did each one of the other parties get a similar notice? A. I couldn't state positively; I think they did.

Q. Do you know what they did with them? A. No, sir.

Q. You gave yours to Mr. Copeland? A. I believe I did. I am not positive.

Q. Do you know whether he had it published? A. No, sir.

Q. Did you pay for that notice? A. No, sir.

Q. Do you know who did pay for it? A. No, sir; I do not.

Q. What was the next step you took in reference to that entry? A. After quite a time we went to Camden again for the purpose of taking up that land.

Q. Did you have the money to take it up with? A. Yes, sir.

Q. Where did you get it? A. I got some from Mr. Copeland.

Q. Did you apply to him for the money? A. No, sir; I don't know that I did.

Q. How was it, then, that he let you have it? A. At the time we were talking of taking up the land, it was understood by me I could get the money the same as other people had, by borrowing—Mr. Copeland would get the money for us, I mean to say.

323 Q. From whom did you understand it? A. I knew from conversations with people who had taken up the land previous to me.

Q. Had Mr. Copeland told you? A. Mr. Copeland told me he would get the money for me. I knew it previous to that from the other parties.

Q. You relied on it? What did you do when you came to go down? Did you take the money with you? A. Yes, sir.

Q. How much did he let you have? A. He gave me about sixteen hundred dollars.

Q. Did he go along with you when you went to prove up? A. No, sir.

Q. What did he give you that for? A. For my part of the money and for the part of the people who went with me.

Q. The same parties who went down with you to make the application? A. Yes, sir; I think they were the same.

Q. What did you do with that money? A. When he gave it to me?

Q. Yes, sir. A. I put it in an envelope and put it in my pocket.

Q. Then what did you do with it? A. I went to Camden with it, and after we came to the Land Office I paid for my own land with my part of it.

Q. What did you do with the other part? A. The other part was given to the men who it belonged, or for whom it was given to me.

324 Q. Did you sign any note for that? A. Yes, sir.

Q. Where? A. In the room of the hotel at Camden.

325 Q. How did you deliver the note? A. I think I gave it to Mr. Copeland after I come home.

Q. You signed it before you went to the land office to pay out your land? A. Yes sir.

Q. Did anybody else sign a note there? A. Yes sir.

Q. Who? A. Those men who went there with me.

Q. For what purpose? A. I gave them the money and they signed the notes and I put the notes in my pocket and returned them to Mr. Copeland when I returned to Pike City.

Q. Where did you get the notes? A. They were given to me at the time I paid the money.

Q. Did you get any other paper from the Land office? A. I think the paper is the final receipt is it not?

Q. Yes sir.

Mr. Youmans: This, (showing a paper) is the final receipt of Emmett S. Keebaugh, dated May 2nd, 1900 for $400. for the S. W.-4 of Section 21, Tp. 6 S. Range 25 W.

Mr. McRea: It is understood that the whole thing is to be copied.

* * * * * * * * *

326 Q. That, (indicating) is your testimony before the land office when you proved up? A. I believe so. I see nothing to indicate that it is not.

Q. That (indicating) is your signature? A. Yes sir.

Mr. Youmans. This is the testimony of the claimant to prove up for his land.

Mr. Hemingway: Let me see it. (Paper passed to Mr. Hemingway)

Mr. Youmans: That is introduced.

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329 Q. In that you say the estimated market value of that timber is $400. Did you estimate it before you went down there? A. I did not estimate the amount because I was not capable of it by not being familiar with the timber. Mr. Copeland told me that the timber on that would be worth more money than I would have to pay for it.

Q. You put it down there at $400. Did he give you that estimate? A. I could not say.

Q. After you had gotten your land proved up and your final receipt, what did you do with your final receipt? A. It is my impression that it was put into the safe by Mr. Copeland. I am not positive on that.

Q. Did you deliver it to him? A. I think so. I could not say positively because it made no impression upon me.

Q. Why did you deliver it to him? A. Merely for the safe keeping of it.

Q. What became of the receipts of the other parties who went with you? A. They were all put together.

Q. Why were they put together? A. I don't know
330 why they were put together.

Q. Were the receipts given to you at Camden? A. I could not state that they were at Camden or on the train, but I think I had all of them, I am not positive.

Q. Why were they given to you? A. I don't know, unless I was the head of the party and had money and they looked to me to take care of these papers.

Q. Each member of the party was of lawful age? A. Yes sir.

Q. He had borrowed the money? [Q.] Yes sir.

Q. The land belonged to him? A. Yes sir.

Q. The receipt belonged to him? A. Yes sir.

Q. Why was it not delivered to him? A. I know of no other reason except what I have given you; I think I had these receipts. It is not clear to me that I did have them.

Q. That is the only reason you recollect why they were given to you? A. Yes sir.

Q. Is it not a fact that Mr. Copeland or Mr. Martin or Mr. Alexander had instructed you to bring the receipts? A. No sir. I don't remember any such instructions from Mr. Copeland.

Q. Or Mr. Martin? A. No sir.

Q. Or Mr. Alexander? A. No sir.

Q. Notwithstanding you got all the receipts and brought them back? A. Yes sir.

331 Q. And you gave them all to Copeland? A. That is my impression, also.

Q. And he put them all in the safe? A. That is my impression.

Q. Did you make any disposition of the timber? A. After some time there was a contract that was known as the timber contract that I signed there.

Q. How did the contract come to be made out? A. I don't know. It was made out in the office.

Q. Did you direct it to be made up? A. I believe I was questioned as to whether I would sign such a contract.

Q. Who questioned you? A. I don't know.

Q. Was it Mr. Martin or Mr. Copeland or Mr. Alexander? A. I don't know how that matter come up. I don't remember that.

Q. Who drew up the contract? A. I don't remember whose writing it was.

Q. Who was present when you signed it? A. I think Mr. Copeland presented it to me and I signed it.

Q. Was it for the same land that you had entered? A. Yes sir.

Q. Had you seen other contracts? A. Yes sir, I had seen them; I never had read one through.

Q. Where had you seen them? A. I saw a timber contract in the office. I think Mr. Copeland had it in his hand. I think I saw it before I had been spoken to about signing any other.

Q. You never read any? A. No sir.

Q. Did you contract to convey your timber which
332 you entered? A. I think I did.

Q. What were the terms of it, what were you to get? A. I think it was buying the timber at 50 cents a thousand. I don't remember.

Q. Did you read it at all at the time?

The Court: At the time you signed it?

The Witness: Yes sir, I must have read it at that time.

Q. What were you to get? Was anything said about your note? A. I am not positive on that, but at that time it was my belief that it was a release of the note.

Q. Was the note delivered to you? A. No sir.

Q. What became of that note? A. I don't know.

Q. Do you know how long it was after you had made the entry that this contract was signed? A. No sir; I don't remember.

Q. Did you get anything in the way of money? A. At the signing of that contract?

Q. Yes sir. A. No sir.

The Court: What did you do with your land?

The Witness: I sold it.

Q. To whom? A. The Detroit Timber & Lumber Company.

Q. What did you get then? A. I got a check for $25.

Q. When was that? A. Last April a year ago, I think it was.

The Court: That is all then, that you got out of the transaction?

The Witness: That is all I got of it.

333 Cross-Examination

By Judge Read:

Q. You say you signed a written contract after you had gotten your final receipt some time, but you don't remember how long afterwards? A. No sir, I don't remember how long afterwards, before I did sign it.

Q. Was that the only contract you ever made up to that time with reference to this land or timber? A. Yes, sir.

Q. You made no agreement, contract or promise of any kind prior to that time? A. No sir.

Q. With any one? A. No sir.

Q. Then at the time you got your receipt you considered that you were the owner of the land and the only thing you

owed was the note you executed to the company? A. Yes sir, that was my understanding.

Q. You had a right to do with the land as you saw fit? A. Yes sir, I considered it so.

Q. Were your expenses charged in that note, or were they charged to you on the books? A. I don't remember.

Q. Was it one or the other? A. That the expenses were put into the note in some form,—what form, I don't remember.

334 Charles W. Davis, a witness called for the Government, being first duly sworn testified as follows:

Direct Examination

By Mr. Youmans:

Q. What is your name? A. Charles W. Davis.

Q. Where do you live? A. I live over in Pike County, near Emmett.

Q. During the year 1900 where did you live? A. I lived in Pike County, Arkansas, the principal part of that year.

Q. What did you do? A. What was my occupation?

[A.] Yes sir, what was your occupation? A. I was working for the Martin-Alexander Lumber Company.

Q. Did you make an entry on public lands? A. Yes sir.

Q. In Pike County? A. Yes sir.

Q. About when? A. When the entry was made?

Q. Yes. A. It was about April, 1900; yes sir, it was on the 10th day of April, 1900.

Q. How did you come to make that entry? A. I want to understand you a little more clearly. What do you mean by that question?

Q. What attracted your attention to it; how was your mind called to it? A. What attracted my attention to it was a suggestion from Mr. Copeland.

Q. Go ahead and tell what occurred between you in
335 regard to that suggestion. A. Now, the best of my memory is that I was working for the company.

The Court: What doing?

The Witness: I was handling rough lumber; and I was at work one day and Mr. Copeland passed where I was at work and he rather stopped. I was at work in the shed adjoining the planer shed, and he asked me if I desired to buy some land under the Timber and Stone Act. I think now, from the best of my memory, these were about his words. Of course, it was a new thing to me, this Timber and Stone Act and I told Mr. Copeland that I didn't understand it clearly, it being a new law, you know that I didn't know anything about it, and Mr. Copeland, to the best of my memory, explained to

me. I don't see how I can go back there and repeat every word. I can give you the substance of what occurred. Mr. Copeland asked me if I desired to make an entry or buy some land under this Timber and Stone Act, and it being a new law that I was not acquainted with, I asked Mr. Copeland about it and he went on to explain that I could buy this land and pay for it at so much per acre and that I could borrow the money to pay for it, and that it was a legal business. Then Mr. Copeland, to the best of my memory, asked me if my wife desired to make an entry under the Timber and Stone Act. I told him, Mr. Copeland, I did not know. I was down at work at this time; so he requested me to talk to my wife about this matter and let him know whether or not she desired to buy land under this Act, and also when I could do this, so I told Mr. Copeland that I guessed I could have a conversation with my wife that night in regard to the matter. I don't remember just what day it was. I didn't say and it was a new thing to my wife. I told her that Uncle Jim says we can buy 160 acres of land each, under this Timber and Stone Act, and we can borrow the money for it, the purchase to include our expenses that we would be at in regard to the matter, and it would be to our interest to do it; it would be to our interest to make this purchase, that it would be all right, it was a legal act of
336 business. After we talked the thing over for sometime she told me to tell Mr. Copeland if that was correct she would like to make an entry. We would both make them together. I think when I saw Mr. Copeland again it was at the same work and under the same shed, possibly in one, two or three days after that time. I related what passed to him as near as I could, what passed between my wife and I, and there was some other parties that were desiring to make timber and stone entries and he said he would go out to a [ceratin] tract of land and show it to us on a certain day and that we could all go up there and look at it, and so when this day came around, Mr. Copeland, myself and wife, and other parties,—

Mr. Youmans: Name them.

A. Mr. Moran, Mrs. Emma J. Moran and Bill Dorsey was in the party, and when the day arrived that was set we got in a wagon and drove over there to look at some land that Mr. Copeland described to us as being United States Government land that could be bought under this Timber and Stone Act, and we went on the land some three or four hours and taken dinner out there, and after we had our dinner we come on back to town,—Oh, on the way I don't [—] where it was, after we came back from out there there was something said in regard to when we should go to make application to enter this land at the land office. There was a day set for us to go to

Camden, Arkansas to enter this land. I think probably, Mr. Copeland set the day, as well as I remember, and when this day come around our party, including my wife and these other parties I have mentioned prepared ourselves to make this trip to Camden, Arkansas, and Mr. Copeland, on the morning we had made our preparations to start on this journey,—our little necessary preparations we had to make to leave home,—we met him down near the depot and on that morning Mr. Copeland let me have $30. in money for expenses on that trip and also railroad tickets over what is known as the Arkansas and Southwestern Railroad from Pike City to Smithton. He said Mr. Davis when you get back here, if you have any money left over and above the $30. that is not incurred for ex-
337 penses, turn it over to the company. And we started on this trip and went down to Camden, Arkansas and made application for this particular land. I don't remember the numbers of this land.

Q. Is the paper I now show you your application? A. Yes sir, that is my signature. I suppose that is the application.

Mr. Youmans: I introduce this application of the witness Charles W. Davis, dated April 10th, 1900:

* * * * * * * * *

338 Q. Where was this land located? A. It is in Pike County.

Q. Arkansas? A. Yes sir.

Q. You went down there; what did you do? A. When we got down to Camden we went to the land office and reported to those officers that we wanted to make application there to enter or to buy certain tracts of land there from the United States Government.

339 Q. Under the Timber and Stone Act? A. Yes sir.

Q. Each one of your party made an application? A. Yes, sir.

Q. Did the officers give you anything there? A. They gave us a notice to be published in the paper.

Q. Each one? A. Yes sir.

Q. Who took charge of the notices? A. I had charge of the notices for my wife and myself and possibly for the others. I am sure I had mine and my wife's and possibly I may have had the others, I don't remember for sure with regard to this matter.

Q. What did you do with them? A. When we got through with our matters we returned to Pike City.

Q. What did you do? A. On our return I met Mr. Copeland. He said you have notices for publication of this land?

I says yes sir; he says, you turn them over to me and I will have them published in the little paper the call the Cannon Ball. I turned them over and saw they were published.

The Court: Who published that at that time?
The Witness: A man by the name of Duncan Nash.

Q. Who paid for your publication? A. At this time? I suppose Mr. Copeland.

[A.] What was done? A. When the time came we had to make a second trip down there in order to prove up this land. When this time was out or nearly out I believe, as well as I remember, that Mr. Moran notified me,—of course I knew the time the officers there told us the day for us to come back, on the 5th of July, to make this final proof, but I think Mr. Moran mentioned something to me. This 4th day of July came on a certain day of the week. I think it was Wednesday and
340 he said [said] something to me about Wednesday being the day to start down there to be ready to make that trip to make this final proof. On this day when the time was out for us to go to Camden, Arkansas, to make the final proof on this land, we made our preparations for the trip,—That is our necessary preparations around home to leave there and I met Mr. Copeland again, down, I believe it was, near this company's office, at this time, and Mr. Copeland, I suppose had remarked something in regard to this matter,—the way I remember it,—and he asked me where I was going, and I said I was going to Camden, Arkansas to make final proof on this land; that we had to make proof down there and he remarked, that is so, I will have to get those notices of publication now to carry down with you. He didn't have them with him. He had to return to his residence. This was on the morning for our departure for Camden, the last trip. Mr. Copeland mounted his horse and he was gone a minute and got back and turned over this newspaper clipping for each and every one of our party, saying that the publications had been published in our paper. He said we would have to carry this money with us, then he said that Mr. Alexander was gong down on the train as far as Smithton or somewhere down on the road. I think now, as well as I can remember to call these facts to my mind at this present time, that was all Mr. Copeland said. We got on the train and Mr. Alexander was on the same train.

Q. Did you have the money to make the payment? A. No sir, not at this time.

Q. Was anything said about the money? A. You mean on this particular morning?

Q. Yes sir you were starting for the purpose of paying out this land. A. Yes sir.

Q. Had you made any arrangements with anybody about the money? A. No sir, there was nothing said about the money at this time, that I remember of.

341 Q. That was the first time you had spoken to Mr. Copeland about it? A. In regard to the money?

Q. Yes, sir. A. Oh, the first time—

Q. I didn't mean that you hadn't spoken to him at all, but the first time you talked to him about it he said he would get the money for you? A. Yes sir.

Q. Had he spoken to you any other time after that time since your return from Camden on the first trip? A. No sir.

Q. And you made your arrangements then without speaking to him anything about money at all only on this morning? A. He said Mr. Alexander was going down with me. He told me that we could borrow the money there. The first time he said Mr. Alexander would go down on the train with us but I never understood him in regard to the matter at that time. We started on this trip together. Our destination was Camden and Mr. Alexander was on this train with us and we all got on this train together.

Q. What about the tickets? A. We got passes over this road.

Q. Where did you get them? A. They gave us passes. There is another thing that I could state. On our first trip in giving me this expense money Mr. Copeland gave us passes from Pike Arkansas, over to Smithton, Arkansas, over this Southwestern Railroad. Now, on the second trip he didn't give us passes. We went on down over this road, but we paid nothing for getting down there first when we went on. When we got back there coming back this young man,—I don't remember his name but he was a young boy like [king] of a fellow that had charge of the train, the conductor was off. When we was at the hotel he delivered this morning passes over the road to us and also over to the others,—passes over

342 the road from Pike, Arkansas and Smithton,—going both ways.

Q. In other words you went to Smithton over that road without paying anything or having any passes? A. Yes sir.

Q. When you came back to Smithton and were at the hotel on your return this young man delivered you passes which covered your trip both ways? A. Yes sir.

Q. Go on with the other part of it; you went down to Camden? A. Let me see. I am on the return trip now going back. On this train on our leaving down there to Smithton, Arkansas, Mr. Alexander himself in person turned over $30. of expense money to me in regard to our party.

Q. What did he say when he did that? A. He said he let me have this money to cover our expenses and so he said that

he was going to meet me at a certain hotel in Camden, Arkansas, or for me to meet him there. This was on the train on the trip from Pike Arkansas, to Smithton. Mr. Alexander when he let me have this $20. to cover our expenses from Smithton Ark. to return to Smithton he said to me to meet him at a certain hotel at Camden, Arkansas. He was on the train with us to Smithton and we taken another road at Smithton. He separated from us. When we got to Camden, Arkansas we had our dinner at the hotel there and I went down to this particular hotel,—I believe they call it Ouachita Hotel to meet Mr. Alexander there and I met him on the sidewalk in front of this hotel and to the best of my memory he remarked that he hadn't had his dinner; that it was after 12 o'clock and for me to come back down there in a half an hour or such a matter, and he would be ready with my money and if he was not in the office I could inquire there and they would tell me what room he was in and I could go up there. I went back to my hotel and stopped there and I suppose in thirty or forty minutes I went back and
343 inquired for Mr. Alexander and I went up to this room and knocked on the door and the invitation was to come in I walked in and Mr. Alexander was writing some notes and he told me on this train,—while on this train from Pike to Smithton that he would expect me to execute a note for the money that I was to borrow, so when I got in the room in the hotel at Camden, Arkansas, Mr. Alexander was writing some notes,—I suppose he was writing at the table. I did not stop to examine the notes. I did not pick them up to examine them. He remarked that he had the money there now to pay for these claims and that we had to make final proof on them that day and he asked me if I would take this money to the land office and pay it over to the land officers there, so I told him I would do so, and he counted out the money for the five claims, except $15. in cash that he didn't have in his pocket at that time and he asked me if I had $15. in money in my pocket and he said he had a check and I told him I thought I had $15., and that $15. and the amount of money that he had covered the amount of the five claims we had to prove up.

Q. Did you know how much that was in all? A. I think it was two thousand odd dollars, so Mr. Alexander counted this money on the table and I re-counted it and taken the money and carried it up to the land office and walked down out of the Ouachita Hotel across the street to the land office and I met a man,—at that time I thought it was Mr. Duke,—I was not acquainted at the land office. I had been there once before and I didn't know whether the man I saw was Mr. Duke or not, but I found out afterwards that it was not.

I inquired of this gentleman,—I told him my business there was to make final proof on the claims that was to be proved up that day and that I had the money there in my possession to pay off these five claims and I asked him if he was the man to whom I had to pay this money and he said yes, and I made the remark to him if it was all right to pay him this
344 money and he said it was. I counted out the money to him and he took charge of it and I remarked that I would go back to the hotel where the party was and we would all be up there again and I returned to the party.

Q. And you all went up there and they made their proofs? A. Yes sir, we all went together.

Q. Did the officers give you anything? A. Yes sir, I believe they gave us what was called a final receipt.

Q. From the Government for this money? [Q.] Is the paper that I now show you yours? A. Yes sir.

Mr. Youmans: I will ask that this receipt be introduced:

* * * * * * * * *

The Witness: Yes sir, to the best of my recollection of it that is the receipt that I got.

Q. Where was this land located? In Pike County, Arkansas? A. Yes sir, there is another thing there that happened that I think of in regard to,—I told you that Mr. Alexander was writing some notes when I went in to that room. Mr. Alexander told me that in taking possession of this money "You tell the parties when the final proof is made on this land I will have these notes ready to sign and you can all
345 come back here and sign them up". I told him I would do so.

Q. Did you do that? A. No sir, we did not do that.

Q. Why? A. I can only explain to you the reason. When the final proofs were made I remarked to the gentlemen present with me what Mr. Alexander had told me in regard to this matter and we came over to the hotel there and signed our notes for this money and they told me then, "you tell Mr. Alexander that when we get to Pike City we will talk to him about this matter." I returned backed to this room and told him what they said; I said, I am ready to sign my note and my wife would do the same thing if you want it done and he remarked, "you can all go back there together and you can sign it up; and so this wound up this affair at Camden, Arkansas.

Q. What did you do with your receipt? A. I carried it with me, and the receipt of my wife back to Pike City, Arkansas, and when we got back to Pike City, Arkansas, the best of my memory is we got together Friday afternoon and the next

day or probably Monday Mr. Alexander named this subject of signing these notes for this money. Well, there was some little squabble with him and the other parties in regard to it and inasmuch as I told him that I would give him a note for the money, I signed the note for this purchase money.

Q. Did your wife sign one? A. Yes sir, so when we signed these notes then, to the best of my memory, there was a contract there to sell them the timber on this land.

Q. Where was the contract? A. It was in the office of the company.

Q. At the time you signed the note? A. Yes sir, to the best of my memory about it.

346 Q. Did you sign the contract at the same time you signed the note? A. Yes sir, I think I did, the best I can remember. Is that (referring to a paper) a copy of the contract?

Q. I think this is the original. A. Yes sir, that is my signature. I signed the note first and then Mr. Alexander said if I desired to sell that timber at the rate of 50 cents per thousand feet stumpage, that I could sign them a [centract] to that effect and he would have Mr. Martin, president of the company, cancel this note of indebtedness.

Q. The note that you had just signed? A. Yes sir, so inasmuch as this buying land from the Government was a new thing to me, I asked for a little explanation in regard to this. You see, I had no deed from the Government at all, and as well as I remember, I remarked in a conversation about this, that had he not better wait until I got the patent from the Government before I made any contract or committed myself in any way to sell this timber, and the best of my memory Mr. Alexander explained like this. He says, suppose you are a farmer in the State of Arkansas and suppose you make the purchase of a farm from a certain individual,—you couldn't make the purchase if his wife is not present,—she is off in some other part of the state or in some other city and it becomes necessary for this deed to follow that her signature be attached to it. Still I knew that according to the land laws of Arkansas, so he explained to me that I had the same right in this case that I would have if I desired to purchase this farm to go ahead and make him a contract to sell if I desired to and taking that for granted to be true I signed this contract to sell him this timber at the price he mentioned.

Q. [In] this the contract? A. Yes sir, 50 cents a thousand feet.

Q. He said your note would be cancelled, but the note was not delivered? A. No sir, but [ite] was cancelled be-

347 cause I saw Mr. Martin do it.

Q. He was present, was he? A. Yes sir.

Q. What was done with the note? A. It was left in the care of Mr. Alexander.

Q. Why didn't you take it? A. He said he wanted to keep it, to the best of my memory. He didn't say what for. I saw this note cancelled, for Mr. Martin sat down and wrote across the face of the note, "this note is cancelled by E. B. Martin, the President of the company."

Q. This paper I now show you dated July 17, 1900 is the contract referred to? A. Did you acknowledge this contract? A. Yes sir.

Mr. Youmans: This contract is the same as the others except as to dates, names and the description of the property.

Q. Before whom? A. Mr. Jim P. Copeland.

Q. He was present in the office was he when this conversation was had? A. I cannot say whether he was present in the office all the time when the conversation was had all the time. He possibly might be. He was there all hours and when it became necessary to acknowledge the contract I acknowledged it before him.

Q. Where was your wife at this time? A. Do you mean the time that I signed my contract?

Q. Yes. A. My wife was on a visit somewhere in the town.

Q. When was your wife's matter closed up? A. To the best of my memory mine was closed up on Saturday and my wife's on Monday.

Q. The next Monday? A. Yes sir, to the best of
348 my memory in regard to this matter.

Q. Did she sign a note at the same time that you did? A. No sir, not on Saturday. She was off on a visit in town somewheres.

Q. Did she sign a note next Monday? A. I think she signed it, I am confident she did. Of course I was not present.

Q. Did you know of her signing a contract? A. She said she signed it.

Q. You were not present? A. No sir, all I can tell you in regard to this is what she told me.

Q. What is that land worth that you entered? What was it worth at that time? A. I paid $2.50 an acre for it.

Q. What, in your opinion, was it worth? A. I never made any close estimate on it at all as to the real value of it.

Q. Do you know the value of land in that country? A. It is owing to what you want it for about that.

349 Q. You have no idea about what the value of that land was, at that time? A. Yes, sir; I had some idea.

Q. What, in your opinion, was that land worth? A. Well, now, my opinion is that that land was worth from—Oh, well, say three dollars an acre.

Q. With the timber on it? A. Yes, sir.
Q. Do you still own it? A. No, sir.
Q. Did you sell it? A. Yes, sir.
Q. How much did you get for it? A. I sold it to the Detroit Timber and Lumber Company.
Q. How much did you get for it? A. Four hundred and fifty dollars and a few cents.
Q. How was it made up? Did you get that much money? A. No, sir.
Q. Explain how that was made up; what entered into that four hundred and odd dollars? A. The purchase money of the land in the final sale of the land was entered on the deed.

The Court: This deed embraced the purchase money, together with what you got?
The Witness. Yes, sir; I don't remember what it was.

Q. You included the purchase money evidenced by your note? A. Yes, sir.
Q. To what land? A. The purchase money of my note, and the expenses, what Mr. McDonald said, attached thereto.
Q. Who was Mr. McDonald? A. He was a man
350 representing himself to me to be in the employ of the Detroit Timber and Lumber Company.
Q. How much money did you get? A. Clear money?
Q. Yes, sir. A. I got twenty-five dollars.
Q. That is what the whole transaction meant to you? A. Yes, sir.
Q. That is what you got out of it? A. Yes, sir.
Q. Twenty-five dollars? A. Yes, sir.

Mr. Youmans. I will introduce in evidence this testimony.

The testimony of Charles W. Davis was introduced in evidence, in the words and figures following, to-wit:

* * * * * * * * *

352 Q. Do you know whether your wife sold her land, too? A. Yes, sir.
353 Q. Were you present when the sale was made? A. Yes, sir.
Q. Was that at the same time your land was sold? A. Yes, sir.
Q. How much did she get in money? A. Clear money?
Q. Yes, sir. A. She got twenty-five dollars.
Q. You have already stated that this paper that I have shown you was your testimony: that (indicating) is your signature there to this testimony that you gave before the officer of the Land Office when you made your final proof? A. Yes, sir; that is my signature there. I know that all right.

Cross-Examination

By Judge Read.

Q. When you went to Camden, I believe you said that Mr. Alexander loaned you twenty dollars in going down there? A. On the last trip; yes, sir.

Q. Did you ask him to loan you that? A. I don't remember that I did.

Q. You don't remember whether you did or not? A. It was on the train there as we went down to Smithton, Arkansas.

Q. But whether you asked him to loan that amount— A. I don't remember.

Q. You know that he did loan you that money to be
354 used in paying your expenses? A. Yes, sir.

Q. He told you at that time that he would expect you to give him a note for the amount of money that was required to pay out the land and your expenses? A. Yes, sir; I understood that from Mr. Copeland's explanation.

Q. You understood that all the way through—that you were simply borrowing this money, and would have to repay it? A. Yes, sir.

Q. At the time you entered this land you believed that the land was worth more than the Government was charging for it, didn't you? A. I trusted Mr. Copeland in a great many things. Of course I never made an estimation of this timber on the land.

Q. Whether you trusted him or not, you believed it would be worth more than the amount you were having to pay for it? A. Yes, sir; or certainly I would not have taken it, if I had never expected to be benefited out of it—I would not have made my claim that way at all; at least I don't think I would.

Q. Then, when you got the money down at Camden, you understood that that was the money that Mr. Copeland had said would be loaned to you and these three entrymen? A. Yes, sir.

Q. You expected to give your note for it, and did give your note for it when you went back? A. Yes, sir; I couldn't say I understood that any particular bills—

Q. But that was the amount of money? A. Yes, sir.

Q. This contract was presented to you by Mr. Alexander, I believe? A. Yes, sir.

355 Q. That was before you returned to Pike City, and after you had gotten your final receipt? A. Yes, sir.

Q. This was how many days afterwards? A. I think it was Saturday. I returned to Pike City on Friday afternoon, and, to the best of my memory, I think it was on Saturday.

Q. Had there been any agreement or contract made by you and Copeland, or Alexander or Martin prior to that time,

about the sale of this timber, or any part of this land, to them? A. No, sir.

Q. There had been no conversation about it? A. No, sir.

Q. At the time you got your final receipt, and at the time you made this contract with Alexander—before making this contract with Alexander, after you got your final receipt, you understood this land belonged to you? A. Yes, sir; that was my understanding.

Q. And you had no contract, express or implied, or agreement with anybody, to sell that to the Martin-Alexander Lumber Company or anybody? A. I studied over that in the Land Office at Camden, and they asked me a question about whether I had made any agreement about this time, and I hadn't done it, and I answered it in the affirmative.

Q. That was true, was it not? A. Yes, sir.

Q. And if you had had an opportunity before to sell
356 that timber to anybody else for more than the Martin-Alexander Lumber Company gave for it, you would have felt at liberty to do it? A. As far as any contract was concerned, directly or indirectly, I would be. Of course I expected to relieve the indebtedness.

Q. But if you could have sold it to some one else for a better price than you could get from them, and get the money for it and pay the note off, you would have done so? A. Of course I would have taken a dollar a thousand. And of course if they would give me as much as I understand—I was borrowing money from them.

Q. You mean you would have paid them off by the other purchase? A. Yes, sir.

Q. If they would have only offered you fifty cents a thousand, and some one else had offered you a dollar, you would have taken the dollar and paid the note? A. Yes, sir; certainly. It would be a man with very poor business sense that would not have done that.

Q. When you went up—after you came to Camden—did you explain to Mr. Alexander why it was that the others did not come up? A. No, sir; there was no necessity about any others coming up.

Q. Did you know that Moran and his wife, and the other parties, knew that you were going up for money? A. I suppose they did; the simple fact I am confident my wife knew it, and we were all there at the hotel, until I told them I was going to meet Mr. Alexander at the Ouachita hotel. There was no purpose stated as to what I should go there for, on this trip.

Q. When you got up there did Mr. Alexander ask you about the other parties? A. I don't remember that he did.

357 Q. Mr. Alexander had the money there, ready to deliver to you, did he? A. Yes, sir.

Q. And it was enough to pay for the land you had to pay at the land office for land you had to enter, except fifteen dollars that you advanced to him? A. Yes, sir.

Q. And final receipts were delivered to you for this money? A. The final receipts that were due me from the receiver there, were delivered into my hands at the Land Office.

Q. Do you know whether receipts were delivered to the others or not? A. Yes, sir; I was there in person.

Q. They were delivered to each one of them? A. Yes, sir.

Q. What did you do with those receipts? A. I just stated.

Q. Did you take them back with you to Pike City? A. Yes, sir.

Q. Do you know whether the others took theirs back to Pike City? A. Yes, sir; I suppose they did. I don't remember of seeing them with the receipts. I carried the receipts for myself and wife.

Redirect Examination

By Mr. Youmans:

Q. Were you asked in cross-examination whether you asked Mr. Alexander to loan you twenty dollars? A. On
358 the trip down there?

Q. Yes, sir. A. Yes, sir.

Q. You say you don't remember whether you did or not? A. If I did I didn't remember it, I say.

Q. Was there any necessity for you to apply to Mr. Alexander for a loan of twenty dollars? Didn't you have money of your own in your pocket at that time? A. Let me see, now: I had some money at that time, but I don't remember; I think, though, probably it was hardly twenty dollars. I think this fifteen dollars I let Mr. Alexander have just about took all the money I had in my pocket. I was then at Camden, Arkansas.

Q. You had enough money to pay your individual expenses, and your wife's? A. Yes, sir.

Q. It was not necessary for the individual expenses of yourself and wife to make application to Mr. Alexander for a loan? A. No, sir; not on this trip.

Q. And you were not looking after the expenses of the other parties—not expecting to pay them yourself? A. No, sir; not out of my own pocket.

Q. Had these other parties made any arrangement with you to pay their expenses? A. No, sir; they never said anything to me about it.

Q. You say at the time you made this entry, that you expected to be benefited by it? A. Yes, sir.

Q. How? A. Well, I supposed that—now, of course,
359 my expectation was in being benefited about it—of course that land up there, as far as agricultural purposes is concerned, I would not buy it at all for agricultural purposes.

Q. How did you expect to be benefited? A. I expected to be benefited more than what the timber is.

Q. How? A. In the realization of some money over and above the cost of this land.

The Court. You expected to sell the timber and get more money than you gave for the land?

The Witness. Yes, sir.

Q. That was the benefit? A. That was the only benefit I could ever conceive that I could get out of it.

Q. It was not worth anything except for the timber? A. Why, to be sure, the land that I—

Q. To whom did you expect to sell it?

Objected to. Objection overruled. Defendants except.

A. Well, of course, I had no particular party in view that I expected to sell it to, that I remember of at this time.

Q. Who was buying timber? A. Well, this company was buying timber.

Q. Was it the only party in this neighborhood buying timber? A. I think there was another company there that they called the Wood Gutter Land Company. They have land near this place. And I supposed I could sell it to some one and realize some benefit out of it. I never settled on no particular party.

Q. When you did sell, you got twenty-five dollars? A. Yes, sir; when I sold the land. That was some months after
360 I gave this timber contract, when the land was sold.

Q. You sold to the Detroit Timber and Lumber Company, who purchased the plant of—

Judge Read. We object.

Q. You did sell to the Detroit Timber and Lumber Company? A. Yes, sir.

Objection renewed.

Mr. Youmans. I do not care to press the question.

Q. How did you expect to pay that note?

Objected to. Objection overruled. Defendants except.

A. At the time this note was given, why, of course, it was explained to me then that I could relieve this indebtedness by selling the timber.

Q. At the time the note was given? A. It was quite probably all at the same time.

Q. You say at the time the note was executed by you it was explained to you that you could sell the timber and pay it off? A. Well, I signed the note. Then directly afterwards I signed the contract.

Q. Before you signed the contract, and before you signed the note, that is, when you were contemplating it, and when you had made up your mind to sign the note, how did you expect to pay it off? A. That is what I was trying to answer.

Q. How did you expect to pay it? A. This transaction all taken place in one day.

Q. At the same time, didn't it? A. Yes, sir; that is the way I remember, when we got back to Pike, Arkansas.

361 Q. Then the contract was in contemplation at the time you executed the note, was that it? A. Why, there had been something said about it. The matter was talked over at that time.

Q. Both of that contract and note? A. To the best of my recollection.

Q. So that, at the time you signed the note you expected also to sign the contract, and that had been talked of among you? A. Well, yes, I suppose it had, to the best of my memory.

Judge Read. We except to all that testimony.

Questions by Judge Read.

Q. You say you talked the matter over among you. A. Myself and Mr. Alexander.

Q. That was on the day he came to you with the note? A. Yes, sir; on Saturday, to the best of my recollection.

Q. At the time he came to you first, as I understand you to say, he presented you the note to sign? A. It was my memory of the first thing that was said about it, up in the office of the company. I signed the note there, and I signed the contract there to sell the timber to release me of the indebtedness.

Q. You mean at that time that Mr. Alexander—that you signed the note—told you that you would sign the contract and cancel the note, or, did he tell you that you could pay off this indebtedness by signing a contract to sell the timber? A. Well, probably the transaction all took place—and to the best of my memory for the signing of this note and for the signing of this timber contract, it didn't take but a very small time.

362 Q. Do you remember which came first, whether it was before you signed the note or after you signed it? A. Why, the conversation in regard to my expectation to sign the timber contract?

Q. Yes, sir. A. It was all there together, and probably it would be spoken about at the same time. It was all there this same time.

Q. That was the first conversation you ever had with him about executing the timber contract, was it not? A. Yes, sir; at that time.

Q. That all took place after you had been to Camden and gotten your final receipt, and returned to Pike City? A. Yes, sir.

Q. While you were at Camden you had promised to sign the note? A. Yes, sir; before.

Q. You offered to at that time, and would have done so if you had had more time? A. Yes, sir.

Q. Mr. Alexander said to you: "Wait until you get to Pike City," and the conversation came up about the timber contract? A. Yes, sir.

Q. Was there anything said at Camden about the timber contract at all? A. No, sir.

Q. The note you signed was dated at Camden, or did you notice that? A. I don't remember the date. Mr. Alexander said he was writing some notes there at the hotel, when I came there.

Q. Do you know whether that was the same note you signed or not? A. I couldn't identify the note I signed at Camden because I didn't read it.

363 Q. I understand you now—I don't want to misunderstand you—that is the first time that the timber contract was ever mentioned: at Pike City, after you returned from Camden, and on the day on which you signed the contract? A. The first time, the timber contract—

Q. Yes, sir. A. Yes, sir, it was on Saturday there at Pike City.

Q. After you had been to Camden and gotten your final receipt? A. Yes, sir.

Questions by Mr. Youmans.

Q. Was that the first time it was ever mentioned as to the means by which you were to borrow the money that was to be loaned to you? A. As to the means that I was to pay that money back?

Q. You stated Mr. Copeland had said that he would get the money for you, or that the company would lend you the money. A. That I could borrow money.

Q. Was anything said between you and Mr. Copeland about how you were to pay that money back? A. To the best of my memory there was not.

Q. Did you say anything to him about paying it back? A. If I did, I don't remember it.

Q. There was nothing said about the payment of it? A. No, sir.

Q. What was the length of time that that note had to run that you signed? A. Six months, to the best of my memory of it.

Q. It was signed and cancelled immediately afterwards? A. Yes, sir.

R. C. Gregory, a witness for the Government, being
364 first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. What is your name? Answer. Robertson C. Gregory.

Q. Where do you live? A. I am living near Clarkeston, Red River County, Texas.

Q. Where did you live during the year 1899? A. Pike, Pike County, Arkansas, I think.

Q. What was your business there at that time? A. Working at the mill.

Q. Whose mill? A. First it was the Pike City Lumber Company; secondly it was the Alexander Hall; 3rd, for the Martin-Alexander Lumber Company, for the Detroit Timber and Lumber Company, next for the Pike City Lumber Company.

Q. For the Martin-Alexander Lumber Company: when did you work for them? A. During all of their time there.

Q. Do you know when they began to work? A. No, sir; I don't know the dates at all, but during all their time.

Q. Did you make an entry of Public Land while there? A. Yes, sir.

Q. While you were working for them? A. Yes, sir.

Q. How did you come to make that entry? A. By being informed that I could do such.

Q. Who informed you? A. Brother Jim P. Cope-
365 land informed me that such a thing could be done.

Q. When did he inform you? A. I don't know for certain the date or in what month, or what year.

Q. Where were you when he told you? A. I was working in the mill.

Q. What did he say to you? A. As well as I remember he approached me and asked me if I wanted to make something easily and honorably, and I answered in the affirmative, of course; and I wanted to know how it was to be done; and he commenced and told me of an act known as the Timber and Stone act, by which a person could buy as much as one hundred and sixty acres of land at $2.50 per acre, and prove up the land at the Land Office, and prove that it was more valuable for its timber and stone than it was for agricultural purposes. And when he told me what he understood the law of it was, I told him that I didn't have the money. I think that is the sub-

stance of it. He said that if I didn't have the money he would assist me in getting it—that I could borrow what money I would need. I told him frankly that I would need all the money that it would take, that I was in such a situation financially that I would need all the money that it would take.

Q. Did he say from whom? A. No, sir.

Q. Was that all the conversation that you had with him? A. In that respect it was. I think we probably made some arrangements and agreement when we looked at the land I took up. I think that was all of it.

Q. That was the first conversation that you had with him? A. That was the first.

366 Q. Did he say anything to you about your wife taking up some land? A. He said anybody could come and take up the land.

Q. Did he say anything about your wife? A. It appears he did mention my wife—I don't know what, except I went ahead and consulted with my wife to go and take up some land.

Q. Did you go and look at it? A. Yes, sir.

Q. Who went? A. I think my wife, myself, Mrs. Robbie J. Hughes, H. P. Hughes, John Scott and Brother Copeland, I think were the parties, and there might have been more parties. I am not sure about it. I think those I mentioned.

Q. Why did he go along? A. Because he knew where the land was, I presume. We didn't exactly know where the land was, and I don't know as I know yet, to testify to it, because I didn't see the chains put to it.

Q. How did you go? A. By wagon and hack conveyance.

Q. Who furnished the wagon and hack? A. I am not sure, but I believe that part of the conveyances came from the stable, and part from H. P. Hughes, one of the lumber haulers on the yard.

Q. Was Mr. Hughes working for the company too? A. Yes, sir; he was a hauler.

Q. Whose stable? A. Frank Buck was the man operating the stable at the time.

Q. Did you go in his conveyance? A. I don't re-
367 member.

Q. You went out there? A. Yes, sir.

Q. What did you do when you got there? A. We went in what you call the same company. We went over a whole lot of land out there in the woods.

Q. Did each member of the party make a selection? A. I don't know as they made any particular selection.

Q. You walked over the lands there? A. We rode over it and walked over it together.

Q. What did you do then? A. We went back to Pike, and soon after that we went to Camden, and there made application for the land.

Q. Is that your signature attached to the paper I now hand you? A. I don't know, sir. That is the way I sign my name.

Q. Look at that and see if that is the application you made at Camden? A. Really, as well as I remember, that seems to be something similar. I don't know whether these are the numbers of it or not. I have my patent.

Q. Get your patent and let's see.

The witness produced paper and read: "East half of the northwest quarter and northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter, of Section 1, in Township 7 South, of Range 25 west."

Q. Is that right? A. That is exactly the way it reads here.

Q. You made that application there, did you? A. That is all I know of.

368 Q. Then this is the one you made? A. It is, as well as I recollect.

The application above refered to was here introduced in evidence, being in words and figures following, to-wit:

* * * * * *

369 Q. What about the expenses on the way out there? A. I don't know, sir; only I knew the expenses were paid—I presume they were.

Q. Do you know who paid them? A. I suppose Mr. Copeland paid them. I think he was the foreman of the whole company that I went with.

Q. Did you get a notice of publication from that office? A. I think that was all turned over to Brother Copeland; I am not positive.

Q. You think all the notices issued to your party— A. That is my supposition.

Q. You say, were turned over to him? A. I don't know whether I just exactly understand you or not. I guess they were all.

Q. You got a notice of publication issued for the land you had entered? A. That is the notice that was to be put in the paper.

370 Q. Did you put it in there? A. No, sir; I didn't; but I suppose it went there. I handed it to Brother Copeland, and he was the foreman.

Q. What did you do then? A. We went about our business until the time came for us to go back and pay for it.

Q. What did you do? A. Went and paid for it.

Q. Where did you get the money? A. I got my money from Brother Copeland.

Q. Where were you when you got it? A. There in the hotel at Camden.

Q. How much did you get? A. There was quite a lot. I don't remember just what it was, but I think it was four hundred dollars.

Q. Do you know whether any of the others got any money? A. I know my wife did.

Q. Did you sign anything then? A. I signed a note and she did because she signed it in my presence.

Q. What did you do? A. I paid in the money. We went out from the hotel to the Land Office.

Q. Did you get a receipt? A. Yes, sir; we did.

Q. Is that it? (handing witness paper) A. Why, if I remember right, that looks something like it.

Q. It describes the same land? A. Yes, sir.

Receipt numbered 19471, of the witness, was then in-
371 troduced in evidence, it being in words and figures following, to-wit:

* * * * * *

Q. What did you do with that receipt? A. I put it down in my pocket.

Q. Did you keep it all the time? A. No, sir; I didn't keep it all the time. I kept it for some time.

Q. What did you do with it then? A. I turned it over to some one of the officers of the company, I think before I made a contract with them for buying in the timber, to release the note that they held against me. That was drawing interest. It was the note against me for the money, and I think it was a note drawing interest.

Q. How long after you got this receipt had you made the contract? A. I don't know. It was some days after that.

Q. You say "some days." How long was it? A. I don't think it was months. I am quite sure it was days,
372 but I don't remember the number of days.

Q. You don't think it was over two weeks? A. I don't really know, sir. I don't believe it was more than a month and a half. I didn't pay any attention to it at the time particularly.

Q. See if that is the contract that you made at that time. (showing witness paper) A. What is the date of that receipt there, please?

Q. August 22, 1899. A. That looks like my signature, and that is the way I sign my name.

Q. This bears date the 13th day of April, 1900. A. I see it does.

Q. That receipt bears date the 22nd of August, 1899. You have stated that you think it was not over two weeks. A. I told you—I was honest about it—I don't know how long it was.

Q. There is August, September, October, November, December, January, February, March, April. A. Nine months.

Q. Yes, sir. A. It don't seem to me like it was that long.

Q. You think it was only a few days afterwards? A. I think it was some time shortly afterwards. It may have been that long.

The Court. Is it or not a fact that that is the wrong date?

The Witness. I couldn't tell you whether it is the wrong date or not.

Q. This is April of the following year. A. I see it
373 is, and it may be correct.

Q. Your impression is that it was a short time after the date of this receipt that you executed this paper? A. Yes, sir; that is my impression, that it was not a great while; but I cannot tell how long it was.

Mr. Youmans. We will introduce this contract. It is precisely the same form of contract that has already been introduced in the testimony of Henry Jones, except as to dates, names and description of land. This contract includes the same land mentioned in Mr. Gregory's final receipt.

It is agreed that the timber contract introduced in the testimony of Henry Jones, is, in form, the contract executed by this witness, and by all the other witnesses who executed timber contracts for the sale of the timber on the lands mentioned in this suit, the sole difference being in the names and description of lands.

(Copy of this blank contract will be found at page of this record.)

Q. How did the matter of the signing of the contract come up? A. Why, just simply by signing a contract of that kind.

Q. How was it brought up to you? A. I really don't remember.

Q. Did anybody suggest it to you? A. It strikes me forcibly that Brother Copeland suggested the idea to me, that if I wanted to save the interest on my note, or have the note cancelled, and stop the note or stop the debt, or something like that, that I could sell the timber for fifty cents a thousand, or

something like that, you know. I saw the contract didn't make any difference with me, so far as I knew at that
374 time—fifty cents a thousand was as much as they had been paying for timber of that kind, and I thought that would be the top of the market, and I thought it was a favor to me to [stope] the interest on that four hundred dollars.

Q. It was your object to stop the interest? A. It was my object to get shut of that debt. As far as I could see I think there was plenty of timber there to satisfy the debt at that time, perhaps.

Q. This is what it says about it: "And it is admitted that the said purchaser has, at the date of the execution and delivery hereof, paid on account of such purchase price the sum of four hundred dollars, the receipt of which is hereby acknowledged; the balance thereof, should there be any beyond the amount above stated and eight per cent interest per annum on the said four hundred dollars, shall be payable in monthly payments at the end of each month as the timber or lumber from time to time is cut and removed from said premises." A. I understood that if there was more timber there than it took to cancel that note and what is due on it—it was coming to me.

Q. It makes provisions for the payment of interest. A. Yes, sir. The note was cancelled. I was of the impression when the note was stopped the interest would stop, and it was their business to go ahead and cut their timber.

Q. How long had that note to run? How long was it before it was due? A. I don't remember how long it was before that note was due.

Q. Was it not six months? A. I don't remember, sir. I read the note, but I think it was about the same form of
375 other common, plain, open notes; but I don't know whether it was five months or six, or nine months or twelve. I don't recollect.

Q. Do you know whether the note was due or not, at the time you made the contract? A. I don't remember that.

Q. Did Mr. Copeland say anything to you about your note being due? A. I don't remember that he did say anything at all about it being due, but it was my understanding, or impression, that I could settle the note in that way on that, and thereafter there would be no note against me.

Q. You don't remember whether this is the correct date on the contract or not? A. Why, sir, I have not any right to dispute it.

Cross-Examination

By Judge Read:

Q. You say that when this proposition was first made to you by Mr. Copeland, you told him that you were willing to go

into it, if there was anything coming to you—if it was all right, and everything of that kind, and you would need all the money? A. Yes, sir; that was the understanding.

Q. You understood that you were to be advanced or loaned all the money necessary to make this entry? A. That was the proposition; that I could borrow all the money I needed.

Q. And that was to include the paying for the land, and your expenses down there too? A. That is the way I understood it.

Q. And the reason you went into the deal there, was because you thought you could borrow the money and make something out of the land? A. That was the reason.

376 Q. You did expect, when you went into this thing, to be able to make an honest investment there that would pay you money? A. Yes, sir.

Q. And you went down there, as you say, and you made an entry and got your final receipt, and kept it for some time yourself, and finally turned it over? A. Yes, sir.

Q. Do you remember where you turned it over? A. I don't remember the order about turning over that receipt. You have got me mixed up some on this contract business. It is probable that I got the receipt or held one until Tom Clements went to Camden, and I sent the receipt with him, with an order, to get the patent, and he turned the receipt over. I would like to get that construed if I can, because I might have made some error.

Q. You did give Tom Clements an order? A. I gave Tom Clements an order myself.

Q. For your patent? A. For my patent. The receipt was given to him to exchange for the patent.

Q. Then did he bring you back your patent? A. Yes, sir; he brought back both the patent for myself and wife. I wrote the order and signed my wife's name to the order. I am not sure about it. I expect the order would be there at the Land Office.

Q. What have you done with that patent, your patent? A. I have it in my pocket. I have been paying taxes on the land. I have paid them two years.

377 Q. You still have the land, have you? A. Yes, sir.

Q. You made the contract to sell the timber off the land, as you say, for the purpose of paying off the note? A. I did.

Q. And what money you had borrowed? A. Paying off the note and the money I had borrowed.

Q. Including the amount paid for the land and your expenses? A. Yes, sir.

Q. Did you, up to the time you made that timber contract, make any contract with reference to this land? A. No, sir;

that is the only contract, or shadow of one, that ever existed between me and any one.

Q. Did you, prior to the making of that timber contract, have any contract or agreement with Mr. Alexander, Mr. Copeland or Mr. Martin, or either one of them, that you would sell them any part of that timber—of the timber on it or any right in it of any kind? A. If my memory serves me right, that is the only thing that ever came up in the way of a proposition. There never was a proposition between the company and me at all.

Q. You never had any conversation? A. Mr. Copeland never had any conversation with me, or I with Mr. Martin or Mr. Alexander, about the matter at all, and if Mr. Copeland ever hinted at that question I have no recollection of it.

Q. So that prior to the time you paid for the land and got your final receipt, you had made no contract, agreement or promise of any kind, with reference to the land, the timber upon it, or any part of the land? A. Nothing in the
378 world. Those are the only things that I know of.

Q. After you had purchased the land and paid for it down there and given your notes for the purchase money, did you regard the land as yours? A. I did; yes, sir.

Q. You had the right to do with it as you pleased? A. I thought the land was mine to do as I pleased with it.

Q. If any one had offered you a better price for the timber than the Martin-Alexander Lumber Company, would you have sold it? A. I would have sold it to the man that offered me the most money for it.

Q. And in doing that you would have thought you had a right to? A. Yes, sir.

Q. Do you regard the land now as worth anything? A. Yes, sir.

Q. What is it? A. I think that land is worth a dollar to me. I am paying taxes at two dollars. If any one wants it I will make a trade for a dollar an acre—that is, if I am entitled to keep the land. I think the taxes are paid at two dollars per acre.

Q. You think it is assessed more than it is worth? A. I don't know about that. It is worth a dollar an acre. I would rather pay taxes on a dollar than two dollars.

Q. You spoke of borrowing money, then, to pay this land out; did you ever borrow any money before? A. I think perhaps I borrowed money in Texas when I was a boy. I have been in Arkansas quite a long time, but I don't know as I ever borrowed a great deal of money of mine. I ex-
379 tended an account with them for half of my interest—with the Martin-Alexander Lumber Company—before that. I had run ahead of my time with them more than once.

I think if you could produce the books with them it would show that. I am sure that I could have borrowed some money from them people—I could have borrowed a little money from them if it was necessary.

Redirect Examination

By Mr. Youmans.

Q. Has the timber been cut on that land? A. I don't know about the land. I know it was taken off.

Q. Has the timber been cut off of your wife's land? A. I don't know.

Q. The land adjoins? A. Yes, sir.

Q. Have you been out recently? A. No, sir. I left the State in August, and I have not been out on the land since August, but I made inquiry about the land. I think it was then I had a talk with this timber man, McDonald.

Q. You say you expected to make some money out of it? A. Yes, sir; I did.

Q. How much have you made? A. I have not made anything on the land so far. I have not been called upon for a settlement finally. I don't know whether the timber has been cut or not. In fact, for late months the timber could not be cut. I know I have not made anything so far except the land. I know if I am right to keep it I have two hundred acres of land in me and my wife's name in Pike County Arkansas.

Q. At the time you got this money you owed that note, but you don't remember when it was made to fall due,
380 do you? A. No, sir; I do not.

Q. How did you expect to meet it when it fell due?

Objected to. Objection overruled. Defendants except.

A. There was nothing said about how I could meet the note. They just offered me a note. I proposed to borrow the money to get hold of that land.

Q. How did you expect to pay it? A. And if I could have got to it—I knew everybody in that country was acquainted with me, and—

Q. How did you expect to pay it? A. The only way that I had to pay it was to cut timber enough in it. That was the only way I had to pay at that time, because I wasn't worth it otherwise.

Q. The only way you could have paid that note was to sell the timber off that land? A. To sell, or in some way to get it cut and put it upon the market, if a man wanted to buy it, and if not, in the stump.

Q. The manner of payment of the note would have to come out of the timber on the land? A. I don't know that it would have to.

Q. Was there any other way to pay it? A. Not within six months.

Q. If the note was within six months? A. I believe if it came to a show down I could have borrowed the money over there from other parties to pay that money off entirely, different from that company.

Q. Did you expect to do that? A. No, sir; I didn't expect to have to do anything of that kind.

381 Q. Did you have any idea of how you were to pay that note at the time you executed it? A. I never gave that any particular thought. When I made a proposition that had been accepted, I thought that was all right.

Q. You made a note for four hundred and some odd dollars? and your wife also made one for some four hundred dollars? A. I don't believe hers cost as much as mine, quite, because she only took one hundred and twenty acres.

Q. Hers was three hundred and something? A. I don't remember whether it was or not.

Q. Then, whatever it might have been, these two sums of money you had to pay? A. She and I together, because I had made out those notes, because I, being the head of the family, I took it upon myself to consider the whole thing as one.

Q. At the time you made them, or that they were made, you didn't know how they were to be met when they matured? A. No, sir; I didn't think that I would have to meet them at maturity, but I think I could have paid them off if it had been a plain case of show down, and I couldn't have disposed of any of my timber. I believe I could have met them. I have not any particular assurance that I could have met them, but I believe I could.

And further the witness saith not.

Court adjourned.

382 Friday morning, November 14, 1902.

Mr. Youmans: We want to introduce some papers relating to the entry of Gus G. Copeland and Bill D. Copeland. I will introduce the application of Gus G. Copeland, dated February 8, 1900.

The application of Gus G. Copeland above referred to and introduced, is in words and figures following, to-wit:

* * * * * *

383 Mr. Youmans. I will introduce the Receiver's Receipt given to Gus G. Copeland, of date April 24, 1900.

The Receiver's Receipt referred to and introduced, is in the words and figures following, to-wit:

* * * * * * * * *

384 Mr. Youmans. I will introduce the proof of the claim of Gus G. Copeland—the testimony given by himself in making final proof of the claim, entered of date April 24, 1900.

The testimony referred to and introduced is in the words and figures following, to-wit:

* * * * * * * * *

386 Mr. Youmans. I want to introduce the application of Bill D. Copeland, dated December 12, 1899, for the east half of the southeast quarter and the southwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of Section 12, Township 7 South, Range 25 West.

The application referred to and introduced is in the words and figures following, to-wit:

* * * * * * * * *

388 Mr. Youmans. We want to introduce the final receipt given to Bill D. Copeland, dated March 1, 1900, No. 19584.

The receipt here referred to and introduced is in words and figures following, to-wit:

* * * * * * * * *

Mr. Youmans. I want to introduce the proofs made by him on the 27th of February, 1900.

The testimony here referred to and introduced is in words and figures following, to-wit:

* * * * * * * * *

391 Mr. Youmans. I desire to introduce the contract of Bill D. Copeland, of date March 5, 1900. This is similar to the other contracts that have been read, with the exception of the names, and the descriptions of the land, and the dates. It purports to be acknowledged before Jim P. Copeland.

(A copy of this contract will be found in the testimony of Henry Jones, at page of this record.)

392 Mary Davis, a witness for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. Your name is Mrs. Mary E. Davis? Answer. Yes, sir.

Q. You are the wife of Charles W. Davis? A. Yes, sir.

Q. Where did you live during the year 1900? A. At Pike City.

Q. Did you make an entry of Public Land while you lived there in Pike City? A. Yes, sir.

Q. How did you come to make that entry? I mean by that, what first brought it to your attention? A. Mr. Davis told me.

Q. Did you have any conversation with anybody else in regard to that? A. Yes, sir; I believe, Mr. Copeland.

Q. What conversation did you have with him about it? A. I asked him when we were out on the land.

Q. Asked him what? A. Was it right for me to take it up, is the only thing I remember.

Q. Why did you ask him that question? A. Because I never knew of anybody buying in land in that way.

Q. What did he say? A. He said it was all right.

Q. Was that all the conversation you had with him
393 with reference to that? A. I remember I told him I was not a property owner, and he said I could borrow the money to buy the land.

Q. Did he tell you from whom you could borrow the money? A. No, sir.

Q. Did he tell you that he would loan you the money? A. No, sir.

Q. Was there any further arrangement with regard to the money? A. Not with me at that time.

Q. Did your husband conduct the business for you? A. Yes, sir.

Q. What was the next thing you did with reference to that? A. We went to Camden to make the entry.

Q. That is, you made the application? A. Yes, sir.

Q. Is that your signature on the paper I show you? A. That is my name. I don't recognize the signature.

Q. Did you write your name when you were there at the Land Office? A. Yes, sir.

Q. Did you write that? A. I couldn't say positively [where] I did or not.

Q. Is that the way you sign your name? A. Yes, sir.

Q. You swore to that before an officer there? A. Yes, sir.

Q. And you made only one application at the Land Office for land? A. Yes, sir.

394 It is agreed that this paper may be introduced.

Mr. Youmans. This is the affidavit making application for the entry of certain lands. It is the first affidavit introduced of a female applicant, and I will read the whole of it. (reading)

* * * * * * * * * *

395 Q. You say before you went down there there was no other conversation between you and Mr. Copeland as to how the money was to be obtained? A. No, sir; not between me and Mr. Copeland.

Q. Didn't you satisfy yourself as to how it was to be obtained, or when you were to pay it or anything of that kind? A. No, sir.

Q. You didn't ask any more about that? A. No, sir.

Q. How did you expect to pay it?

Objected to. Objection overruled. Defendants except.

A. I suppose we would be provided by the land.

Q. How provided by the land? A. I supposed we
396 would sell it.

Q. Sell all the land? A. The timber.

Q. To whom did you expect to sell the timber? A. I didn't know at that time.

Q. You didn't know from whom the money was coming? A. I had an idea.

Q. What was your idea? A. That it was from Mr. Alexander. Mr. Copeland told me that—I don't say that he told me that; he told my husband that.

Q. You got your information from him, then, did you? A. Yes, sir.

Q. Who paid your expenses down there to Camden? A. My husband.

Q. Do you know where he got the money? A. No, sir; I never asked him anything about it.

Q. Did you have any other conversation with Mr. Copeland other than that you have mentioned, when you went out to see the land? A. No, sir; not that I remember of.

Q. What was the next thing you did with reference to the land? A. We went to prove it up.

Q. You had no conversation with Mr. Copeland between the time you first went to Camden and the second time? A. Not that I remember.

Q. What did you do when you went there the second time? You made proof, did you? A. Yes, sir.

Q. Where did you get the money? A. My husband
397 had it.

Q. You never saw it at all, did you? A. No, sir.

Q. Did you get a certificate or receipt from the Land Office? A. I don't remember that it was handed to me.

Q. To whom was it handed? A. It was handed to my husband.

Q. What did he do with it? A. I couldn't tell you that.

Q. Did you ever see it any more—do you recall having seen it any more—do you remember? A. Yes, sir; I think I signed a contract.

Q. I am talking about the receipt that you received. A. I couldn't be positive.

Q. You say you signed a contract: for what purpose? A. To cancel the note for the money.

Q. Tell about that: when did you sign a note? A. What day of the month?

Q. With reference to your second trip to Camden when you signed the note—before or after? A. After.

Q. At Pike City? A. Yes, sir.

Q. How did you come to sign it? A. Mr. Copeland brought it down to my house.

Q. What conversation did you have with him, then, about that? A. He brought it in, as well as I remember, and asked me to sign the note and contract, and in signing the contract the note was cancelled.

398 Q. He brought the note and the contract to you at your house, did he? A. Yes, sir.

Q. At the same time he said if you would sign the note and then sign the contract, the contract would cancel the note: is that what he said? A. Sign the note, and the contract selling the timber, and that that would cancel the note, yes, sir.

Q. Which one did you sign first? A. The note.

Q. Then you signed the note? A. Yes, sir.

Q. Right away? A. Yes, sir.

Q. Did he explain what he wanted you to do before you signed either one? A. Nothing more than what I have told you.

Q. Sign the note, and sign the contract selling the timber, and that that would cancel the note? A. Cancel the note, and I would receive over and above—

The Court. You would receive whatever the timber brought over and above the note and interest: that is the idea?

The Witness. Yes, sir.

Q. Did he explain to you why it was necessary to sign the note when it was to be cancelled right immediately afterwards? A. No, sir.

Q. He didn't explain that to you? A. No, sir.

399 Q. What length of time did that note have to run: when was it to fall due? A. It was dated six months after date.

Q. So you didn't wait to have it cancelled until it became due, but cancelled it at once, on the same day that it was made: is that right? A. He said that it would cancel it.

Q. Did he give the note to you? A. No, sir.

Q. Why didn't he? A. I couldn't tell you.

Q. He kept the note? A. Yes.

Q. Did he mark it cancelled? A. No, sir. He didn't, but he said he would have it done.

Q. What day was this: how long after you had come back from Camden the second time? A. We came back from Camden, if I remember, on Friday, and that was Monday following.

Q. Where is that contract? A. I can't tell you.

Q. Did you ever see it again? A. No, sir.

Cross-Examination,

By Judge Read.

Q. You have detailed all the conversation that you had with Mr. Copeland with regard to this matter, have you? A. Yes, sir.

Q. All that occurred? A. All that I remember.

Q. He is the only one with whom you had a conversa-
400 tion about this land transaction, is he not? A. Yes, sir.

Q. You understood from him that you could borrow money from Mr. Alexander—do you mean the Martin-Alexander Lumber Company? A. Yes, sir.

Q. And pay this note, and he told you it would be all right for you to enter the land? A. Yes, sir.

Q. And you wanted to enter the land when you found that you could pay for it, because you thought it would be a good investment for you? A. Yes, sir.

Q. That was the object you had in entering it, was it not? A. Yes, sir.

Q. It was the only object you had in entering the land: that you thought it would be a good investment for you? A. Yes, sir.

Q. When you went to Camden, your husband went with you, didn't he? A. Yes, sir.

Q. Of course you relied upon him to transact your business for you, did you? A. Yes, sir.

Q. And you understood when you got this money that you were to give a note for it, didn't you? A. When the money was borrowed we gave a note?

Q. Yes, ma'am. A. Yes, sir.

Q. When Mr. Copeland came to you with the note at
401 Pike City, you understood that was the receipt that you were to give for this money that had been expended by you in buying this land? A. Yes, sir.

Q. And you were perfectly willing to sign it? A. Yes, sir.

Q. When the contract was presented to you by Mr. Copeland he explained to you what the nature of the contract was, that that was a sale of the timber to the Martin-Alexander Lumber Company, and if you signed that that that would cancel your note? A. Yes, sir.

Q. You understood that, did you? A. Yes, sir.

Q. Before you signed it? A. Yes, sir.

Q. You say you expected to be benefited by the fact that there would be a surplus of timber left over, and you would still own the land? A. Yes, sir.

Q. So that you went into it with the expectation of benefiting yourself; now, I understand that you said that you understood that you were to sign a note when you were down at Camden? A. No, sir; I didn't undefstand that I should sign it at Camden. It hadn't been mentioned to me that I should sign the note there.

Q. When had it been mentioned to you? A. It was not mentioned when I should sign the note until Mr. Copeland brought it to my home.

Q. That was the first time the note was mentioned to you; it was not mentioned that you should sign the note at
402 Camden, but it was explained at Camden that you should sign the note when you came home? A. No, sir; there was no understanding.

Q. You didn't get the money at Camden? A. No, sir.

Q. Your husband got it for you, did he not? A. Yes, sir.

Q. You don't know what promises or statements he made down there about signing the note? A. No, sir.

Q. The first thing that Mr. Copeland presented to you was the note, was it, for signature? A. Yes, sir.

Q. He presented the note to you for signature, and then, after you had signed the note, then it was he brought up this question about the timber contract, was it not? A. Yes, sir; after I had signed the note.

Q. Was that the first time any question had ever been discussed between you and anybody else about your signing a timber contract? A. Yes, sir.

Q. That was the first time you had been approached on that subject, or had a talk on that subject? A. No, sir.

Q. You had not made any promise or agreement of any kind to sign any timber contract at that time, had you? A. No, sir.

Redirect Examination

By Mr. Youmans.

Q. You said you expected to be benefited by this con-
403 tract; how did you expect to be benefited?

Objected to as having been gone over.

Mr. Youmans. I want to ask her what benefit she expected to get out of it.

The Court. Proceed.

Q. What benefit did you expect to get out of it? A. Just over and above.

Q. After the timber was sold? A. Yes, sir.

Q. Did you know whether there would be any surplus or not? A. No, sir.

Q. Did you make any calculation in regard to that? A. No, sir.

Q. Did you have the timber estimated on the land in order to ascertain whether there would be any surplus? A. No, sir.

Q. Was the land valuable for anything after the timber was taken off? A. No, sir.

Q. So that there was nothing there except the timber to make it valuable, and you had made no estimate to determine whether or not there would be timber enough to pay even the amount of money you were borrowing; you signed a note for a certain amount of money; do you know how much? A. No, sir.

Q. You don't know even how much you signed a note for? A. No, sir.

Q. That was an indebtedness against you? A. Yes, sir.

Q. You don't even know whether that timber would
404 raise money enough to pay off the indebtedness you incurred? A. Yes, sir; if the timber was worth $2.50, I thought surely there was more than that.

Q. You had no estimate made of the amount of the timber? A. No, sir.

Q. Did you know that your expenses in going to Camden were included in the note? A. No, sir.

Q. Did you know that the fees paid to the officers were also included in the note? A. No, sir.

Q. Did you know that the fee for the proof of publication, for publishing the notice was included in that amount? A. No, sir.

Q. So you had made no estimate as to whether or not you might not be still in debt, after all the timber was taken off that land, did you? A. No, sir; not in that way.

Q. Mr. Copeland just presented the note and you signed it? A. Yes, sir.

Q. He presented the contract and you signed that? A. Yes, sir.

Q. What have you done with that land since? A. Sold it.

Q. To whom? A. To the Detroit Timber and Lumber Company.

Q. What did you get? A. It was just twenty-five dollars.

Q. That is all you have ever gotten out of that? A. Yes, sir.

405 Q. Do you know whether your indebtedness has been paid off? Has that note been paid off under that contract that you made? A. I don't know only what Mr. Copeland told me.

Q. Has he told you anything since? A. Not since then.
Q. Since when? A. Since I signed that contract.

Recross-Examination

By Judge Read.

Q. You spoke about not knowing the timber on that land that the note was given for: you mean you don't remember what your note was given for: you knew at that time, didn't you? A. Yes, sir.

Q. You knew you relied on your husband in this matter? A. Yes, sir.

Q. You were governed by his advice in regard to that as much as anything else? A. Yes, sir.

Q. You went out to examine this land? A. Yes, sir.

Q. You saw the amount of timber there was on the land there yourself, and took the opinion of other people? A. Yes, sir.

Q. But you, in your own mind, thought that at $2.50 an acre for the land it was a good investment? A. Yes, sir.

Q. And you wanted to make it? A. Yes, sir.

Redirect Examination

By Mr. Youmans:

Q. You stated that you took other people's opinions
406 in regard to the amount of timber there was on the land: what other people's opinions did you take? A. My husband, Mr. Copeland, and the people who were on the land at that day.

Q. What people were they? A. Mr. Moran and his wife and Mr. Dorsey.

Q. What was Mr. Copeland's opinion in regard to the amount of timber on the land? A. I don't recollect.

Q. Did you ask him how much timber he thought was on the land? A. No, sir.

Q. How did he come to give you his opinion, if you didn't ask him: you say you took his opinion? A. He said it was a good investment and that the trees looked numerous.

Q. Did he give you his opinion as to the amount of timber on the land—what it would sell for? A. No, sir; he did not.

Q. All the opinion that he gave you was that the trees looked numerous, and that it was a good investment? A. Yes, sir.

Q. Did he explain to you how it would be a good investment? A. No, sir.

Q. He didn't say what the investment would amount to, or how it would be a good investment? A. No, sir.

Q. What did you go out on the land for? A. To look at it.

Q. To be able to say that you had been on the land, didn't you: didn't Mr. Copeland tell you that in order to comply with the law that you had to go on the land? A. He didn't tell me that.

407

Q. Were you informed that that is what you had to do?

Objected to.

The Court: Ask her if she knew it.

Q. Did you know that you had to go on the land? A. Yes, sir; I think my husband had just told me that it was necessary to go on the land.

Q. That is the reason why you went, was it not? A. Yes, sir.

Q. So you would be able to testify, or make the affidavit in the Land Office, that you had been on the land and made a personal investigation? A. Yes, sir.

Q. That was the object of your visit there? A. Yes, sir.

Judge Read: You did go there and saw the timber on the land and saw the character of the land, and everything of that kind?

The Witness: Yes, sir.

Q. Have you any experience in regard to estimating the value of timber growing on land? A. I don't know that I have.

Q. You have never had anything to do with that? A. No, sir.

Q. You are, as you stated in your affidavit, a housekeeper? A. Yes, sir.

Q. You have had nothing to do with the timber business, and don't know how to estimate the amount of timber on the land? A. No, sir.

408

Q. Who gave you the description of the land when you went to the Land Office—who gave you the numbers of the land? A. Mr. Copeland.

And further the witness saith not.

409

Archibald G. Winslow, a witness for the Government, being duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. What is your name? Answer. Arch G. Winslow.

Q. Where do you live? A. Prescott, Arkansas.

Q. Where did you live during the year 1899? A. Pike City.

Q. What business were you in? A. Office man.

Q. For whom? A. Martin-Alexander Lumber Company.

Q. What is your duty as office man? A. I was stenographer.

Q. Did you, while you were in Pike City in the employ of the Martin-Alexander Lumber Company, make an entry of Public Lands? A. Yes, sir.

Q. Did your wife also make an entry? A. Yes, sir.

Q. At the same time you did? A. Yes, sir.

Q. Her name is Emma Winslow, is it not? A. Yes, sir.

Q. How did you come to make that entry? A. I don't know that I just understand that question.

Q. What was it that brought the matter of entering of these lands to your attention? A. I really don't remember what it was.

410 Q. You can't recollect? A. No, sir; I can't recall; I don't remember.

Q. Did you have any talk with any body with regard to it? A. No, I think not. I might have went to Mr. Copeland to talk, but I would not be certain.

Q. Didn't you talk with anybody with regard to it? A. That is why I would not be certain—I think not.

The Court: How did you learn that land could be entered under this Timber and Stone act?

The Witness: I had heard general conversation about the town, and, I believe, I seen a notice in the paper. Later I went to Copeland and asked him for information.

Q. What did Mr. Copeland tell you? A. I couldn't say that I remember distinctly what he said. I went to him to find out the process of how this land could be entered.

Q. You don't know what he told you about it? A. No, sir; I can't say the exact particulars of it.

Q. What was the result of your conversation with him? A. I went to look over the land.

Q. By yourself? A. No, sir; in company with Mr. Copeland, Mr. Means and his wife and my wife.

Q. Is that J. O. Means? A. Yes, sir

Q. Mrs. Caroline H. Means? A. I never knew her first name; I suppose so.

Q. You went with those three and Mr. Copeland? A. And Mr. Patterson.

411 Q. What Patterson is that? A. Jim Patterson.

Q. James F. Patterson? A. I wouldn't be certain, but that is my impression.

Q. How did you go?—in a livery stable rig? A. In a livery stable rig.

Q. Who paid for that? A. I don't know who paid for it. It was my understanding it was to be charged to my account.

Q. Personal account? A. Timber account, I believe.

Q. Did you carry a timber account there? A. No, sir. That point in my mind is not clear, as to whether it was to be charged to my timber account or not. I know it was to be charged to my account.

Q. Why did you say timber account? A. I don't know why I said that.

Q. And you went out there: why did Mr. Copeland go? A. Because he knew the country well around there. He had been a surveyor, and knew the country, and I wished to have him go.

Q. Why was it necessary for him to go? A. Under the conditions of that act, as I understood it, we had to see the land.

Q. Who told you that? A. Mr. Copeland.

Q. Then what did you do? A. Went to Camden.

Q. How long afterwards? A. I don't remember how long afterwards it was.

412 Q. Who went with you? A. The same parties.

Q. Do you mean by that your wife and Mr. Means and his wife and Mr. Copeland? A. And Mr. Patterson.

Q. Why did Mr. Copeland go? A. We asked his advice and asked him to go with us.

Q. Did you employ him to go? A. No, sir; I believe not.

Q. Who paid the expenses of the trip? A. It was paid the same way as the livery rig. They was to be charged to our separate account.

Q. Your individual account? A. I don't know. I suppose it was individual account.

Q. Who had the money to pay the expenses? A. Mr. Copeland.

Q. Why was it not given to you? A. I don't really know; we didn't ask for it.

Q. Was there anything said between you and the company, that they were to pay the expenses? A. No, sir.

Q. How did this come about then that they paid the expenses? A. I don't know how it came about.

Q. Had you made any agreement or arrangement with the company in regard to that? A. No, sir.

Q. Had no talk with Mr. Alexander or Mr. Martin? A. No, sir.

Q. How do you know it would be charged to your account? A. I understood from Copeland it would be.

Q. Had you made any arrangement with Mr. Cope-
413 land about it? A. No special arrangements only I talked with him about it, and he said he would do that.

Q. Why: why do that? A. I was borrowing money from Mr. Copeland, and I wanted to borrow the additional sum to pay that, and as long as it would be about paid I was willing to pay him for our—

Q. You had had a conversation with him in regard to borrowing this money to pay for the land; what was that conversation? A. I don't remember just what it was, only just the general facts.

Q. How did the conversation arise in the first instance? A. In the first instance, after I asked him about the land I wanted to know, of course, about the money myself, and I wanted to know where I could get it, and he said he would get it for me.

Q. Did he tell you where he would get it? A. I don't believe he did. I don't believe I asked him.

Q. Did you ask him before? [—] Yes, the money for the expenses—yes, sir. I beg leave to retract that. I don't think that I did.

Q. How did it come that he paid the expenses? A. For the reason that we were to get money enough to enter this land—pay all the expenses—and I was to give him a note for that amount of money with the expenses added.

Q. So it was included in your note then, and not charged to you? A. No, I think not. I don't know how it was, as a matter of fact. It has been so long since, and I have been away from there, and have been in another business, that it has slipped my mind.

414 Q. You went to borrow money from Mr. Copeland; and you made a statement a little while ago it was to be charged to your account. A. The main amount would not be charged to my account.

Q. I am talking about the expenses. You said the expenses were to be included in the note. A. I don't think I did. If I did I didn't mean it.

Q. You say the expenses were charged to your account—where? A. They were given to the bookkeeper, and I don't know why.

Q. What had the bookkeeper to do with it? Why did you give it to the bookkeeper? A. I didn't give it.

Q. Who did? A. Mr. Copeland.

Q. What did Mr. Copeland give it to the bookkeeper for? A. To be charged to my account, I suppose.

Q. Then you borrowed it from him as an individual—the bookkeeper? A. I think not.

Q. On whose account against you was it charged: somebody had the account against you: whose account was that? A. It must have been the account of the Martin-Alexander Lumber Company.

Q. What did they have to do with it? A. I suppose he was their agent.

Q. Did you suppose he was representing them in this mat-

ter? A. That was my supposition. I had no direct evidence. That was my supposition.

Q. Didn't you know, as a matter of fact, that he was representing them? A. Well, yes.

Q. Then he was representing the Martin-Alexander
415 Lumber Company in loaning you the money, was he? A. Yes, sir.

Q. And paying your expenses down there? A. I suppose so, yes.

Q. That is what you understood? A. I hadn't been told that, but that is what I have been told.

Q. You were right there in the office? A. Yes, sir.

Q. Had you never talked with Mr. Alexander about entering land? A. No, sir.

Q. Or Mr. Martin? A. No, sir; I think not.

Q. You had a talk only with Mr. Copeland? A. Yes, sir.

Q. Mr. Copeland paid your expenses to Camden, and you went down there and made the entry? A. Yes, sir.

Q. Was the paper that I now show you your affidavit? A. Yes, sir; that is. Yes, sir; that is my signature.

Mr. Youmans. I desire to introduce this affidavit in evidence.

The affidavit here referred to and introduced is in the words and figures following, to-wit:

* * * * * * * * *

417 Q. Did you get anything there at the Land Office? A. What do you mean: did I "get"?

Q. Any notice for publication? A. I believe I did.

Q. What did you do with it? A. I don't remember. I had it published in the paper.

Q. Did you take it to the paper and have it published? A. I don't remember whether I did, or whether I gave it to Mr. Copeland. I don't remember.

Q. Why did you give it to Mr. Copeland? A. To have it published.

Q. If you did give it to Mr. Copeland, what was the reason for giving it to him? A. To have it published.

Q. Did you pay for the publication of it? A. No, sir; I didn't pay for it.

Q. Who did? A. I suppose he paid for it under the same agreement or—

Q. Under the same agreement? A. Not agreement, but same arrangement.

Q. Was there anything said about that at the time you made the arrangement? A. I don't remember.

Q. What was the next thing done in regard to completing the entry for the land? A. I don't remember the particulars.

Q. Did you go to Camden again? A. Yes, sir.

418 Q. Who? A. Mr. Copeland, Mr. Means and his wife, and my wife.

Q. Why did he go with you again? A. I suppose for the same reason as before stated.

Q. Before, he went down, you said, to help you in that matter: what was the necessity for him to go again to help you? Why? A. Because there was none of us posted in any way, in any shape or manner.

Q. You had already been instructed to come back and make your proofs? A. Yes, sir; I think we had.

Q. What was the necessity for him to go along? A. I think it was at the request of several of the parties.

Q. Did you employ him to go along with you? A. No, sir.

Q. Where did you get the money? A. He furnished it to us.

Q. Where? A. Camden.

Q. How much did he furnish you? A. Four hundred dollars.

Q. Did he furnish any one else any money? A. I could not say.

Q. Did he furnish your wife any? A. Yes, sir.

Q. Did he furnish Mr. Means any? A. I did not see.

Q. Did he furnish Mrs. Means any? A. I did not see him.

419 Q. You know that he furnishhed your wife some money? A. Yes, sir.

Q. Handed it to her? A. Yes, sir.

Q. What did she do with it? A. Put it in her pocket.

Q. Did she go to the Land Office and pay it there? A. Yes, sir.

Q. Did you get a receipt there? A. Yes, sir.

Q. Is the paper I show you the receipt? A. Yes, sir; I believe it is.

Mr. Youmans. The receipt is introduced.

The receipt here referred to and introduced, is in the words and figures following, to-wit:

* * * * * * * * *

Q. What did you do with the receipt? A. I took it back to Pike City with me, as I remember it?

Q. What did you do with it there? A. I believe I

420 gave it to Mr. Copeland for safe keeping. I think for no

other reason. I know I gave it to Mr. Copeland for safe keeping.

Q. What did he do with it? A. I suppose he locked it in the safe.

Q. Didn't you have access to the safe, and could have put your papers in it? A. No, sir; I didn't. I didn't know the combination.

Q. You could have given it to Mr. Martin or Mr. Alexander either? A. Yes, sir, I suppose I could have done so.

Q. See whether the paper I now show you is the affidavit of your wife, made when she made the entry. A. I could not prove her application. That is her signature.

Q. Did she get a receipt at the same time? A. I believe so.

Q. Is the paper I now hand you the receipt she got? A. It looks like it.

Mr. Youmans. The affidavit of Emma Winslow is introduced.

The affidavit referred to and introduced, is in the words and figures following, to-wit:

* * * * * * * * *

421 Mr. Youmans. The receipt is also introduced.

422 The receipt referred to and introduced is in the words and figures following, to-wit:

* * * * * * * * *

423 Q. What is the next thing you did with reference to that land? A. I don't know what the next thing was I done with it.

Q. Did you sign anything with regard to the money? A. Yes, sir; I remember signing a note.

Q. Where did you sign that? A. Do you mean at the very place? At Pike City—wait a minute. I don't remember whether it was Pike City or whether it wasn't. I believe it was at Pike City.

Q. Before you went down there or afterwards? A. It was afterwards.

Q. After you came back and paid the money out? A. Yes, sir.

Q. And obtained your final receipt? A. Yes, sir.

Q. Where did you sign the note? A. I believe it was at Pike City.

Q. Whereabouts in Pike City? A. I don't remember where it was.

Q. Was it in the office of the company? A. I don't think I could say. It was so far back I can't remember.

Q. How long after you came back from Camden the second time? A. I don't remember when.

Q. When did you leave Pike City? A. To go away?

Q. Yes, sir. A. I believe it was in November, 1899. I believe it was then. I don't know whether it was or not.

Q. You got your final receipt October 13, 1899. How
424 long after that did you leave? A. I don't remember. It was in November, I am pretty sure.

Q. You signed the note before you left, did you? A. I don't know whether I did or not.

Q. Did you ever go back there to sign it? A. No, sir.

Q. Have you ever been back to Pike City since? A. No, sir.

Q. Did you ever sign the note anywhere else than at Pike City? A. I think so, but I would not be positive.

Q. Where? A. I might have signed it at Prescott.

Q. Who brought it down to Prescott? A. Mr. Copeland.

Q. Do you remember when that was? A. No, sir; I do not.

Q. A little while ago you said you signed it at Pike City. A. Thinking further about it, I don't remember where it was. I don't remember the points. They are all hazy in my mind.

Q. You say you don't know where you did sign it? A. No, sir.

Q. Do you remember that you signed it at all? A. Yes, sir; I signed it some place.

Q. How old are you? A. Thirty-three.

Q. You are satisfied that you signed the note some place, but you don't know where you signed it? A. No, sir. But, as I said before, I believe it was at Prescott.

Q. If it was at Prescott, Mr. Copeland brought it to
425 you. A. Yes, sir.

Q. Did you sign anything else in regard to that land? A. I don't remember that I did.

Q. Did you sign a contract with regard to the timber? A. Is that the contract that we were talking about?

Q. No, sir. We were talking about a note; you know the difference between a contract and a note—an ordinary note? A. Yes, sir.

Q. Didn't you sign a contract with regard to the timber growing upon the land? A Yes, sir.

Q. Where was that? A. Prescott.

Q. How did you come to sign it at Prescott? A. Mr. Copeland brought it there.

Q. Do you remember when that was? A. No, sir; I don't remember when it was.

Q. Where was it in Prescott that you signed it? A. In my residence at Prescott.

Q. Do you remember when that was? A. No, sir.

Q. Is the paper I show you the contract? A. That is my signature; yes, sir.

Q. That is the contract. A. I would like to see that again. (paper handed to witness.) That is all.

Q. That is it? A. Yes, sir.

Q. It bears date October 16, 1900? A. Yes, sir.

426 Q. Was that the day it was signed? A. Yes, sir. I wrote it in there myself.

Q. That was more than a year after you had made your final proof? A. I should think so—whenever it was.

Q. The date of your certificate is October 13, 1899, and this is October 16, 1900: was it at the same time you signed the note? A. No, sir.

Q. It was before that that you signed the note? A. Yes, sir.

Q. How long before? A. I don't remember when.

Q. And at Prescott: had Mr. Copeland made two trips down there? A. No, sir. I am not sure on that. Mr. Copeland made a trip on this one, but the first I don't know whether he was there or was not there.

Q. But he did make a trip on this one, and you don't know about the other one? A. No, sir.

Q. At the same time did he present a contract to you to be signed by your wife also? A. I believe so.

Q. That was signed by her? A. I believe so.

Q. On the same day? A. I am not positive, but I suppose it was. You have it there, have you not?

Q. No, sir; I have not got her contract. I have got yours.

Mr. Youmans. I will introduce this contract. It is
427 the same as the others with the exception of the names, dates and description of the land. It is dated October 16, 1900, and shows the same property described in his receiver's receipt.

It is agreed that the contract referred to is the same form of contract as the sample introduced in the testimony of Henry Jones.

Q. Then you did not live there? A. No, sir.

Q. So that recital as to the place of your residence is not correct? A. Evidently not.

Q. Did your wife sign a note? A. On that point I am just like I am by myself—I don't know.

Q. With regard to yourself you are satisfied that you did sign the note? A. Yes, sir.

Q. Did your wife sign one? A. I think she did.

Q. Do you know where? A. No, sir.

Q. Did she sign it at the same time you signed yours, if she did sign one? A. I am not sure, but I presume she did.

Q. Do you know whether she signed it at Pike City or some other place, if she signed one? A. That is a point in the case I do not remember anything about at all.

Q. The only thing you remember about it is that Mr. Copeland brought this contract down to you to be signed? A. Yes, sir; my contract he brought down for me to sign.

428 Q. Didn't you say your wife signed one at the same time? A. Yes, sir. She signed it; I didn't.

Q. It was brought down there at the same time to be signed by her? A. Yes, sir.

Q. What became of your note? Have you paid it? A. I have my final release, and I suppose the note is paid.

Q. What do you mean by final release? A. The contract.

Q. Where is your release that you got? Have you got the original? A. I haven't it here. I have it at home.

Q. Is that (showing paper) a copy of it? A. Yes, sir; I believe that is a carbon copy of it.

Mr. McRae. This is irrelevant. Before this release was signed another company had come and purchased it. This does not show it, but it is true, that the release was given by the Detroit Timber and Lumber Company, and not by the Martin-Alexander Lumber Company, and it has nothing to do with this case.

Mr. Youmans. I asked him where the release was. He said, at the time I presented this to him and asked him if it was a copy of the release, that it was. I want to follow that up and ask him wherein it says anything about the release of the land. He says that he got a release, and I asked him if this paper was a copy of the release, and he said it was, and I want to ask him about the other.

Q. Where did it mention anything about the note in that release?

Objected to. Objection sustained.

Q. Who released the note?

429 Objected to unless it is shown that it is one of these defendants.

A. I don't know.

Q. How do you know it is released? A. I have that final receipt and final release. I suppose the note was.

Q. Did you ever get the note? A. I don't know. I could tell by getting my papers, but that is the only way.

Q. You don't know whether you got it or not? A. No, sir.

Q. You know the way to release a note and pay it is by taking it up? A. Not necessarily, as long as you know it will be taken up.

Q. How did you know it would be taken up? A. I had my release for the land, and I supposed it was paid.

Q. That don't relate to the note at all; you are getting the two confused, the land and the note; what did the release for the land have to do with the note? A. I don't know what it had to do with it.

Q. Then there was no connection between the two, and you still owe the note, is that it? A. I don't think I do still—I don't remember about it. I couldn't state positively.

Q. You gave the note to the Martin-Alexander Lumber Company, didn't you? A. I don't remember that. I think I gave the note. As I said before, I don't remember whether I did or not, but I think I did.

Q. To whom do you think you gave it? A. To the
430 Martin Alexander Lumber Company, or their agent. Probably the Martin Alexander Lumber Company.

Q. Was it payable to the Martin-Alexander Lumber Company? A. I think it was.

Q. Then the Martin-Alexander Lumber Company would have to release it, or the party to whom they transferred it? A. Yes, sir.

Q. Has any such party released the note? A. I don't remember.

Q. You left Pike City in November following the October when you obtained your final receipt? A. Yes, sir.

Q. Do you know whether the timber has been cut on your land? A. Why, yes, the timber has been cut.

Q. How do you know? A. I would not have my final receipt if the timber was not cut. I don't know that it was.

Q. From the Martin-Alexander Lumber Company? A. That was what you just showed me. That shows Martin-Alexander Lumber Company, I believe.

Q. You say you got the release from the Martin-Alexander Lumber Company? A. I got whatever it is.

Q. You don't know what it is? A. No, sir.

Q. Have you had a settlement with them relating to the timber that was on the land? A. No, sir—that release states that the land is released from all claims, does it not?

Q. The release is not here. You have got the re-
431 lease, you say. When did you get that? A. I believe it was last year. I don't know when it was.

Q. That is, 1901? A. It may have been last year or the year before. I don't remember just when it was.

Q. Last year was 1901, and the year before that was 1900; you didn't get the release before you made the contract in October, 1900, did you? A. No, certainly.

Q. And you don't know when you got the release? A. No, sir; I couldn't say when it was.

Q. Did your wife get one too? A. Yes, sir.

Q. Did you have any settlement relating to the quantity of timber cut on that land? A. No, sir.

Mr. Hemingway: I fail to see the pertinency of the matter between him and the Detroit Timber and Lumber Company, or that it has anything to do with this case, and I therefore object to it.

Mr. Youmans: This contract says: "In consideration whereof the said purchaser doth by these presents promise and agree to pay unto the said vendor, his heirs, executors, administrators and assigns; the sum of fifty cents for each and every one thousand feet of lumber, scale measure, contained in the logs or timber which shall be cut" by the Martin-Alexander Lumber Company. (to the witness) Has there been any settlement on account with you under that clause? A. No, sir. I believe the Government stopped that, about somewhere along in there. I am not positive, but I believe that.

Q. Before you got the release of the same? A. Yes,
432 sir. I understand my land has been cut over.

Q. Then they didn't stop them cutting, if they cut it off; then they have done all that your contract contemplated? A. Yes, sir; it appears so.

Cross-Examination

By Judge Read.

Q. The first information you got in regard to this land was, you say, from the general talk about Pike City there, and the advertisement you saw in the newspaper; that is the thing that atracted your attention to it? A. And the general talk, yes, sir.

Q. I say, the first information that you got was from the general talk around there, and then you applied to Mr. Copeland, and asked him in regard to the matter, did you? A. Yes, sir; I believe so.

Q. Did he tell you that any one could enter that land under the Timber and Stone act, by complying with the law; did he tell you that any one could buy that land? A. Yes, sir.

Q. Did you want to buy the land yourself? A. I wanted the land, yes, sir.

Q. Did you have any conversation with him as to how you were to get the money to buy the land? A. I don't remember; I think so, though.

Q. You have a very dim recollection about the whole transaction, have you not, Mr. Winslow? A. Yes, sir.

Q. You know that you wanted to buy the land, and that you made the arrangements to get the money, and did buy the land, don't you? A. Yes, sir.

433 Q. Do you remember whether you gave your note for the money that you got, or not—to refresh your memory, didn't you give your note at Camden—whether or not, when the money was paid over there? A. I don't remember that I did.

Q. You don't remember where you executed the note? The note, you understand is different from this timber contract; the timber contract and the note are not the same? A. No, sir; they are not the same.

Q. They are different: the note is one thing and the timber contract is another thing: you borrowed the money and gave a note for it: you say you don't know where you gave the note, whether it was at Pike City, or where it was? A. I don't remember where I gave it.

Q. Do you remember, as a matter of fact, whether you gave any note at all? A. I suppose that I did, but I wouldn't swear that I did. As a matter of fact, I would not swear that I did. I should have to give something in a business transaction.

Q. You expected to repay the money that you got for buying this land, didn't you? A. Yes, sir.

Q. And for your expenses in connection with the matter? A. I expected it would be paid, yes, sir.

Q. Did you expect to repay it yourself? A. Yes, sir.

Q. You expected to repay these matters yourself? Now, when did you give the timber contract—that was nearly a year after you entered the land—at that time, or when was it—how long was that after you made the entry?

434 Mr. Youmans: Three days over a year. The entry was October 13, 1899, and the contract was October 16, 1900.

Q. That was the first contract you had with him or them, was it not? You had made no contract with these parties about the timber on the land until you had entered the land and paid for it? A. No, sir; I had made no contract.

Q. There had been no talk of a contract up to that time? A. No, sir.

Q. You own the land still, don't you? A. Yes, sir.

Q. Are you paying taxes on it? A. Yes, sir.

Q. Does your wife own her land? A. Yes sir.

Q. And is paying taxes on it? A. Yes, sir.

Q. You got your property from the Government? A. Yes, sir.

Q. Does your patent antedate that contract? A. This was after the patent.

Q. The contract was given after the patent? A. Yes, sir.

Redirect Examination

By Mr. Youmans.

Q. You say you wanted the land: what did you want with it? A. My idea of land is always that land is valuable wherever it is, that, particularly, for grazing land—

Q. You expected to realize something in that business? A. I thought it would be valuable for that some time.

Q. What is that land worth? A. I have been paying taxes on it at the rate of two dollars an acre.

435 Q. Do you think it is worth that? A. I think it is worth that.

Q. What was it worth at the time you entered it? A. I don't know.

Q. What was the timber worth? A. The timber was worth fifty cents, stumpage, is the general price.

Q. I mean, how much was it worth on that land? A. I couldn't say just how much it was worth.

Q. You don't know—did you have any opinion? A. I had an opinion it was worth enough to pay for the land anyhow, and a little over.

Q. Have you got anything over? A. No, sir.

Q. So it wasn't worth that—the land? A. It was worth the land.

Q. So that you didn't get anything, then, over the timber? A. I think I got enough over for the timber and the expenses.

Q. What did you get? A. For the expenses?

Q. That is all you got then, was it? A. Yes, sir.

Q. You say you expected to repay the money yourself: how did you expect to repay it? A. By selling the timber.

Objected to.

Q. How did you expect to repay it? A. By selling the timber.

436 Q. Did you have that expectation at the time you entered it? A. I had expected that it would be valuable for timber.

Q. And you expected to sell the timber and repay the money that you borrowed. A. Yes, sir; in time, I expected to sell it.

Q. To whom did you expect to sell it?

Objected to.

A. I didn't have any expectation. I would sell it for the best price I could get for it.

Q. You left right away in November following the entry: don't you know that the mill company began cutting on your timber right away? A. No, sir.

Q. And your wife's? A. No, sir.

Q. You don't know anything about that? A. No, sir.
Q. Entering it up in your account? A. No, sir.
Q. That land is located in Pike county, is it not? A. Yes, sir; Pike county.

And further the witness saith not.

437 Henry P. Hughes, a witness called for the Government, being duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.
Question. What is your name? Answer. Mr. Hughes.
Q. Henry P. Hughes? A. Yes, sir.
Q. Where do you live? A. I live at Caney Fork.
Q. In Pike county? A. Yes, sir.
Q. Where did you live in the early part of the year 1900? A. Pike City.
Q. Did you make any entry of lands in Pike county during the year 1900? A. Yes, sir.
Q. How did you come to make an entry: I mean by that, what brought the matter to your attention first? A. I understood there was a chance to take up some land.
Q. From whom did you understand it? A. It was the general talk around the place.
Q. Did you have any talk with Mr. Copeland in regard to it? A. Not until I went to him to get information how to do it.
Q. Then, what was done? What conversation did you have with him about it? A. I don't remember just the precise conversation.
Q. Not the precise conversation, but the substance of it. A. I think I asked him how I could get some land.
Q. Did he tell you? A. Yes, sir.
438 Q. Did he tell you you could take it up under the homestead law or the Timber and Stone act, or how? A. He told me I could take it up under the Timber and Stone act.
Q. Did he tell you that you would have to pay $2.50 an acre? A. Yes, sir.
Q. Did you have money of your own to do that? A. I did and I didn't.
Q. That is the point, whether or not you, at the time, had the money of your own to make that entry? A. No, sir.
Q. Did you tell him? A. Yes, sir.
Q. What did he say? A. He said that I could get some.
Q. Did he tell you where? A. Yes, sir; I expect so. He said he could get it for me.
Q. Did you employ him to get it for you? A. No, sir.
Q. He volunteered it, did he? A. Yes, sir.

Q. What was the next thing you did with reference to entering that land? A. I went and applied for it.

Q. You understood that you had to make a personal investigation of the land, did you? A. Yes, sir.

Q. Did you do that? A. Yes, sir.

439 Q. Who went with you? A. Mr. Copeland.

Q. Who else? A. Mr. Keebaugh.

Q. Who else? A. Mr. Patterson.

Q. Anybody else? A. Somebody else—Mr. Fuller.

Q. Who is Robbie J. Hughes? A. My wife.

Q. Did she go with you? A. She went with me at that time.

Q. She made an entry, didn't she? A. Yes, sir.

Q. You went out and made an investigation of it: did you have any conversation with Mr. Copeland there in regard to it? A. Not that I remember much about it.

Q. What was the next thing that was done? A. After that we applied for the land.

Q. You went to Camden, did you? A. Yes, sir.

Q. You say you made this affidavit that I show you (showing witness paper): that is your signature, is it? A. Yes, sir.

Mr. Youmans. I desire to introduce this in evidence.

The affidavit referred to and introduced, is in the words and figures following, to-wit:

* * * * * * * * *

441 Q. In this you made the statement that you were a naturalized citizen? A. No, sir; I did not.

Q. You are a naturalized citizen? A. Yes, sir.

Q. This states that you are a naturalized citizen. A. No, sir; there was a point brought out there, and they decided in my favor when the point was brought out—they decided that I was not a naturalized citizen. I got my citizenship under my father. That point was brought up right there.

Q. What about the expenses going out there? A. Well, we went down there on the general expenses.

Q. Who was "we"? A. We were supposed to borrow money enough to cover our expenses as we went along. That is the idea we gathered from it, that our expenses were to come in in the borrowed money.

Q. From what did you gather that? A. On our borrowed money.

The Court. What had taken place to justify an inference of that kind on your part?

The Witness. We were all together, and we got the cheapest rates we could, and the expenses came in with the crowd, and my understanding—

Q. Who had charge of the money to pay your expenses? A. Mr. Keebaugh.

Q. Who is he? A. He was a man that worked for the company like I did.

Q. You worked for the company also? A. Yes, sir.

442

Q. What particular class of work did you do? A. I handled lumber in the yard.

Q. Mr. Keebaugh worked in the office, didn't he? A. Yes, sir.

Q. Did you get anything at the Land Office? Did you get a notice for publication? A. Yes, sir.

Q. What did you do with it? A. I turned it over to them for safe keeping.

Q. What did you turn it over to them for? A. For safe keeping. It went on the same part that the expenses did, and they could do it better than I could.

Q. Was it not your business to see your notice was published? A. I knew it would be.

Q You turned it over to them for safe keeping, or to get it published? A. To have it published.

Q. How many were the expenses to have covered? A. Our borrowed money covered that expenses too, didn't it?

Q. I don't know. I ask if the company paid the expenses? A. Yes, sir.

Q. What did you do? Did you go to Camden, then, and make proof? A. Yes, sir.

Q. Who had the money? A. Mr. Keebaugh.

Q. Did he make the payment? A. No, sir.

Q. How was that done? A. I gave my note

443 for it.

Q. Do you know where that note is? A. Not now.

Q. Did you ever see it again after you signed it? A. It was cancelled afterwards; I saw it then.

Q. Mr. Keebaugh gave you the money after you signed the note, and you took it to the Land Office and got your final receipt: is the paper I show you your final receipt? A. Yes, sir; that is the final receipt.

The final receipt referred to was here introduced in evidence, being in words and figures following, to-wit:

* * * * * * * * *

Q. You made your proof there also, did you? A.

444 Yes, sir.

Q. The paper I show you is the proof you made? A. Yes, sir.

The paper here referred to is introduced in evidence, being in the words and figures following, to-wit:

* * * * * * * * *

446 Mr. Youmans. That is similar to the proofs that have already been introduced, with the exception of the names, dates and description of the property.

Q. You know your wife's signature, don't you? A. Yes, sir.
Q. She signs by mark there. A. Yes, sir.
Q. She did not make the application, did she, that way? A. I don't know.

Mr. Youmans. I will introduce the affidavit of Robbie J. Hughes, dated June 9th, 1899, signed Robbie J. Hughes, by mark.

The affidavit here referred to and introduced in evi-
447 dence, is in the words and figures following, to-wit:

* * * * * * * * *

448 Q. You know that she made final proof, too, on her land? A. I think so. I wasn't with her when she went down there.

Mr. Youmans. I introduce the final proof and final receipt of Robbie J. Hughes.

The final proof here referred to and introduced in evidence is in the words and figures following to-wit:

* * * * * * * * *

451 The final receipt of Robbie J. Hughes, referred to and introduced in evidence, is in the words and figures following, to-wit:

* * * * * * * * *

Noon recess.

452 1:30 o'clock P. M.

Henry P. Hughes on the stand.

Direct Examination resumed

By Mr. Youmans.

Q. Before dinner we had come to the point of your making final proof and receiving your final certificate at the Land Office. Who paid your expenses on making that trip? A. The company—Emmett Keebaugh.

Q. When you came back from that trip what did you do with your receipt and the receipt of your wife? A. I was not with my wife.

Q. Your own? A. I gave it to Emmett. I told him to take care of it until I needed it.

Q. When your wife got her receipt, what was done with that? A. I don't remember.

Q. What was the next thing done with reference to that land? A. In what way?

Q. Did you make a contract to sell the timber? A. That, I don't remember, whether I did or not, but I think not. I just don't remember whether there was any contract or not for that. I am not sure.

Q. You do not remember whether you made a contract to sell the timber on that land entered by you to the Martin-Alexander Lumber Company? A. No, sir.

Q. What was done about your note that you had executed? A. It was so far ago that I don't remember much about the circumstances.

Q. You don't remember about the circumstance of
453 having a note outstanding of over four hundred dollars; you don't know what became of that? A. Let me see how that was done up—no, I don't remember much about it.

Q. Have you paid that note? A. Yes, sir; I believe so.

Q. You believe you know? A. Yes, sir; I know I have.

Q. How do you know it? A. I still have my land.

Q. Well, still own your land? A. Mr. McDonald—

Q. Who is he? A. The Detroit Timber and Lumber Company—he brought the note down to me, and when I sold the land it cancelled that note. I think that is the way, if I remember right.

Q. When was that? A. I don't remember when it was. I think that was the way.

Q. He brought the note to you? A. He brought the note when I sold him the land. I was sick in bed at the time, several months after I got my Patent.

Q. You are satisfied it was the note that you gave at Camden? A. I think so.

Q. What about your wife's? A. She signed hers in the same way.

Q. Did your wife pay her note in the same way? A. I believe so.

Q. Mr. McDonald represented the Detroit Timber and Lumber Company, and he brought it down to her, and she made a deed to her land? A. Yes, sir.

454 Q. And Mr. McDonald delivered the note to her? A. I think so.

Q. How long was that after you made the entry? A. It must have been several months afterwards.

Q. Was it more than six months after you had signed the note? A. Yes, sir; I think so.

Q. When was that note to be paid? A. About that time somewhere.

Q. Six months after it was made? A. It was somewhere about in that time. I don't remember. It was some little time afterwards.

Q. Your receipt was dated May 2nd, 1900: you say it was about six months after that time? A. I believe so, yes, sir.

Q. That was about December, then, was it, of 1900? A. I don't remember much about it.

Q. Was that all that was given to you? A. That was all, I think. I think when I sold them the land that they cancelled the note.

Q. Did you get the note? A. I think so.

Q. Where did you leave it? A. I don't know. I suppose around the house somewhere, after I got it.

Q. Did you get anything else besides the note? A. No, sir.

Q. Did you get any money? A. Yes, sir.

455 Q. How much did you get? A. We got twenty-five dollars apiece.

Q. In addition to the note that was surrendered? A. Yes, sir.

Cross-Examination

By Judge Read:

Q. You sold your land to the Detroit Timber and Lumber Company? A. Yes, sir.

Q. And they took up the note and paid twenty-five dollars to you? A. Yes, sir.

And further the witness saith not.

456 A. G. Winslow, being recalled for further cross-examination, testified as follows:

Questions by Judge Read:

Judge Read: Have you got that contract here?

Mr. Youmans: Here it is.

Q. This contract that is shown you purports to have been made with the Martin-Alexander Lumber Company, and bears date October 16, 1900: you entered this land when?

Mr. Youmans: Just about a year before.

Q. Do you have any recollection of seeing another contract prior to this time—this timber contract? A. I believe I did. I would not be positive.

Q. To refresh your memory, I will ask you if you did not sign another timber contract before you left Pike City, and after you went to Prescott: Mr. Copeland brought this contract there to you and asked you to sign it, and take up the other contract? A. I believe he did.

Q. How soon after—a short time after you returned from Camden? A. I don't recollect particularly about this other. I believe he brought this one over to me.

Q. I didn't understand, and I ask you the question if you did not sign the contract shortly after you returned from Camden, after having made the final payment—if you didn't sign the timber contract at that time? A. I believe I did.

Q. And then didn't you sign another contract after you had gone to Prescott, which is this contract here, and the one you first signed was taken up by Mr. Copeland? A. I signed that at Prescott.

457 Q. But you think you signed that at Pike City? A. Yes, sir; I remember Mr. Copeland saying something about taking the other one.

Redirect Examination

By Mr. Youmans:

Q. Judge Read Asked you if you signed one at Pike City, and you think you did: don't you remember anything about it, whether or not Mr. Copeland gave you one at Pike City? A. No, sir.

Q. Then, you don't remember anything about signing it: if you have any memory it depends upon his reminder, don't it? A. By that it brings up a chance of recollection. There were two at some time. I don't recollect the very time that I absolutely signed it.

Q. Where did you sign it, if you did sign it, at Pike City: that is what I asked you this morning, and you told me you didn't sign any there: whereabouts in Pike City did you sign it? A. I don't say now that I did sign it, but I believe I did. If I did it was in the office of the Martin-Alexander Lumber Company.

Q. What was there in that contract? A. As I remember it when Mr. Copeland came to Prescott, he stated that this other contract was exactly the same, and that they desired another contract.

Q. Well, now, why? A. After the patent was issued, I think.

Q. Did he explain his reason for that? A. I expect he did, but I don't remember what it was.

Q. What he told you was that he wanted another contract after the patent was issued? A. I wouldn't say that
458 he did say that. I gave that reason, because that is what I believed.

Q. Didn't he tell you that? A. I couldn't tell.

Q. When did you get the idea that that was the reason? A. Simply for the reason that I have got the patent.

Q. Do you think he did? A. Yes, sir; I think he did, but I wouldn't say he did positively.

Q. He wanted the contract signed after the patent was issued, and took that up? A. Yes, sir.

Q. But this was exactly like the other one? A. Yes, sir.

Q. And that was the only reason? A. Yes, sir; that is all I remember.

And further the witness saith not.

459 William F. Waits, a witness called for the Government being duly sworn, testified as follows:

Direct Examination

By Mr. Youmans.

Question. Where do you reside? Answer. Pike City.

Q. Were you living there in 1900? A. Yes, sir.

Q. What were you doing at that time? A. I was logging for the Martin-Alexander Lumber Company.

Q. About that time did you make an entry of Public Lands in Pike County? A. Yes, sir.

Q. How did you come to make that entry? What was it that brought the thing to your attention? A. Well, there were several others entered.

Q. Who were they? A. I couldn't tell all of them. There was Mr. Clements, Mr. Winslow, Mr. Copeland, Mr. Bill Copeland, and Uncle Jim, and a good many.

Q. You knew of the fact that they had entered land? A. Yes, sir.

Q. What did you do when you went about getting ready to make the entry, or when did you consider—did you ever talk with anybody in regard to it? A. Yes, sir.

Q. With whom? A. I talked with Mr. Copeland. I don't recollect whether he approached me or not, but I talked with him something about entering some of it. I knew others were entering, and he told me if I wanted to enter some of the

460 land he would show me some of the land and I could go down there and enter some of it.

Q. Did he advise you how it should be entered—entered under what law? A. I suppose I had also taken the papers there and saw they were taking it under the Timber and Stone act. I took my entry under this act.

Q. Did you know that it required $2.50 an acre to purchase under that act? A. Yes, sir.

Q. Did you have the money? A. No, sir; I didn't have. I knew I could borrow it.

Q. From whom could you borrow it? A. I knew I could borrow it from the Martin-Alexander Lumber Company.

Q. How did you know that? A. I had borrowed money before from them.

Q. How much did you borrow before? A. All the way from twenty-five dollars—I wouldn't be positive exactly, but somewhere between nine hundred and a thousand dollars at one time.

Q. That was charged to you on their books? A. Yes, sir.

Q. Did you go and try them about it? A. No, sir.

Q. Why didn't you? A. Because I saw Uncle Jim, and he told me I could borrow it.

Q. What was that for? A. I borrowed and bought some log teams with it.

461 Q. Did you give them security for it? A. Yes, sir.

Q. On the teams? A. Yes, sir.

Q. Did you arrange with them for security? A. I gave them my personal note for the money I borrowed, but I never did give anything but a book account afterwards. I believe I did give my personal note that time.

Q. When you bought your teams they advanced you nine hundred dollars and took security? A. Yes, sir.

Q. And you didn't have a talk with them about borrowing the money? A. No, sir.

Q. You just talked to Mr. Copeland? A. Yes, sir.

Q. He was working for them at that time? A. Yes, sir; I suppose he was.

Q. Did you go out and make an examination of the land? A. Yes, sir.

Q. Who went with you? A. Mr. Copeland, Mr. Garrison and his lady and Lawrence Horne—I believe Mr. Garrison's lady went—besides Mr. Copeland.

Q. He showed you, did he? A. Yes, sir.

Q. You went on the land and examined it; what did you do? A. We went back home.

Q. When did you go and make an examination of it

462 —a few days after that? A. I couldn't say exactly how long it was.

Q. When did you go back to Camden? A. I couldn't say exactly how long it was.

Q. Did the same party go with you to Camden that went out with you to examine the land? A. Yes, sir.

Q. Did Mr. Copeland go along to Camden with you? A. No, sir.

Q. Who paid the expenses on that trip? A. We got a ticket and went to Camden, and my first trip I bought my ticket with my individual money; that was not given me at all to go to Camden or anywhere; I bought my ticket with my own individual money, and paid my own expenses down there and back.

Q. Who paid the expenses of the others? A. We paid it, and it was all charged up to us.

Q. What was the use of charging it up to you if you paid it? A. I don't know anything about the other—I misunderstood.

Q. You went down when you made your application? A. Yes, sir.

Q. Is the paper I show you the application you made? A. I am no scholar at all. Yes, sir.

Application of William F. Waits, dated March 20, 1900, introduced in evidence, being in the words and figures following, to-wit:

* * * * * * * * *

464 Q. Did the other members of that party make entries too? A. Yes, sir; there was one that did not, just one woman.

Q. Who was that? A. Mrs. Rowan.

Q. Did they enter lands near you? A. One of them did and the other didn't. Lawrence Horne's was next to me.

Q. And they were all in Pike county? A. Yes, sir.

Q. What was the value of the land that you entered? A. You mean timber and all?

Q. Yes, sir. A. Timber and all, it ought to be more than what I gave for it. I got more than what I gave for it.

Q. You had some proofs of publication there, given one to you and one to each other member of the party, weren't they? A. Yes, sir.

Q. What was done with them? A. I don't know what I done with them. They had to be—

Q. To be published? A. That is what I was going to say. We carried them to Duncan Nash, if I am not mistaken—

Q. Did you take them to Duncan Nash? A. I suppose so. It has been so long ago it has slipped my memory. I suppose we did. It has been so long—

Q. Did all the members of your party take their proofs there? A. I couldn't tell you.

465 Q. What did you do after the time elapsed? A. Oh, went back to Camden.

Q. Who paid your expenses at that time? A. We got money from Uncle Jim to pay us.

Q. Why did you do that? A. Simply because I didn't have it. We borrowed it, and gave our notes for it.

Q. When did you give your note? A. After I came back from Camden.

Q. You borrowed money this time to pay your expenses to Camden, and Mr. Copeland let you have it? A. Yes, sir.

Q. What about money to pay out the land? A. We got all the money at once.

Q. Who had it? A. Lawrence Horne. He gave me my money.

Q. Did he have all the money for all the land? A. I don't remember.

Q. Who is Lawrence Horne? A. Lawrence Horne, is all I can tell you.

Q. Was he at work for the company? A. I don't know whether he was at that time or not.

Q. When did he work there? A. He has worked there off and on for three or four times.

Q. Is he there now? A. No, sir; he is here at Court now.

Q. Did he give the money to the other members of the party? A. I don't know.

Q. Did you sign the note when he gave you the money? A. No, sir.

466 Q. When did you sign the note? A. Afterwards.

Q. You proved up and got your final receipt, did you? A. Yes, sir.

Q. This receipt I show you, is that the one you got at the Land Office? A. I couldn't tell you. I should suppose it was.

Q. You got a receipt, didn't you? A. Yes.

Mr. Youmans. This receipt is offered and introduced in evidence. It is dated June 6, 1900.

The final receipt referred to and introduced is in the words and figures following, to-wit:

* * * * * * * * *

Q. At that time you also made the proof that they required, didn't you? A. Yes, sir.

Q. The paper that I now show you is the proof that you made at that time, is it not? A. Yes, sir.

467 Mr. Youmans. This final proof is introduced also.

The final proof referred to and introduced is in the words and figures following, to-wit:

* * * * * * * * *

469 Q. In your proof you have put this down at three dollars an acre. That was fifty cents more an acre than you paid for it? A. Yes, sir.

Q. It was worth that, was it? A. Yes, sir; because the timber and everything on it ought to have been worth that.

Q. Was it worth anything for anything else beside the timber? A. It was entered for timber and stone. The stone might be valuable when it comes into the market.

Q. I am speaking about that particular time. A. I don't know, sir; I can't answer that question.

Q. You got your receipt: what did you do with it when you came back? A. It has been so long ago I don't recollect what I did with it.

470 Q. Do you remember of signing the note when you came back? A. Yes, sir.

Q. Where were [tou] when you signed it? A. I was [betwixed] the mill house and the barn at the mill. I had the note and I saw Uncle Jim Copeland coming, and he came and stopped and talked.

Q. Where did you get the note? A. I had it at Camden but I never signed it. Lawrence Horne gave me the note. I don't know whether I went over there and called to Uncle Jim or not, but I got him and gave him the note, and told him to carry it to the company.

Q. Did you have any talk with him about it? A. No, sir.

Q. How much was the note? A. It has been a long while ago. I don't remember what it was.

Q. What was the next thing done with reference to the land? A. I don't know.

Q. Did you sell the timber? A. No, sir; I sold the land to the Detroit Timber Company.

Q. You never made any contract for the timber? A. No, sir.

Q. You never gave the Martin-Alexander Lumber Company any contract for the timber on the land? A. Yes, sir.

Q. What became of your note? A. It was cancelled.

Q. How long was this after you came back from Camden? A. I don't recollect how long it was. It was some

471 time afterwards.

Q. A week or ten days? A. I couldn't say; I don't recollect.

Q. Did you make this contract with the Martin-Alexander Lumber Company at the same time you signed the note? A. No, sir; I never made any contract with them when I signed the note.

Q. None whatever? A. None for the timber.

Q. Was it after that time that you made the contract? A. You mean the timber contract?

Q. Yes, sir. A. Yes, sir; it was long afterwards.

Q. How long afterwards? A. I don't recollect how long it was.

Q. What has become of that contract? A. I don't know, sir.

Q. What became of the note? A. It was cancelled.

Q. What became of it? A. I don't know.

Q. Why didn't you take it up? A. I couldn't tell you. It has been so long ago I don't recollect. I never thought about any such thing.

Q. Have you disposed of the land? A. Yes, sir; I sold the land to the Detroit Timber Company.

Q. What did you get for it? A. I got my note—what the note called for, and what the land cost me, and twenty-five dollars.

472 Q. I thought you said you had never seen the note any more. A. I said the note was cancelled. I don't know what I did with it. I said the note was cancelled, but I didn't know what we done with it.

Q. It was cancelled at the time you made the timber contract? A. Yes, sir.

Q. You didn't get the note when you made that contract with the Detroit Timber and Lumber Company, did you? A. I don't recollect. It has been so long ago. I never thought about any such thing.

Q. You got twenty-five dollars for the land? A. Yes.

Q. Over and above what it cost you? A. Yes, sir.

Q. During the time that you were gone on those two trips, was the time in making the trip taken off of your time at the mill? A. I was not working by the day at all. I just hauled logs by the thousand.

Q. You were not paid anything then for your time? A. No, sir; I don't suppose I was. I was hauling logs by the thousand; I just got so much a thousand for hauling logs. Of course it was my own time and my own land that I was taking up.

Q. So you never got any pay for that? A. If I did I don't recollect it.

Q. Did you ever get repaid for the expenses you had paid out yourself that first trip? A. I don't know, sir.

473 Q. Did you take that into consideration? A. I don't recollect, it has been so long ago, I told you. I don't recollect.

Cross-Examination

By Judge Read:

Q. Why was it you took up this land? A. I taken it up because I thought that I would make something out of it, that I was a poor man and had to work hard, and that I would get something out of it.

Q. You thought the land would be worth more than you paid for it? A. Yes, sir.

Q. You paid $2.50 an acre? A. Yes, sir.

Q. You stated in your application that the timber on the land was worth three dollars an acre? A. Yes, sir.

Q. That would make the value of the land worth fifty cents more an acre than you were paying for the timber alone? A. Yes, sir.

Q. And you believed that statement was true at the time you made it? A. Yes, sir.

Q. That was your opinion at that time? A. Yes, sir.

Q. You thought it would be a good investment if you could buy that land at $2.50 and the timber was worth three dollars—you thought this would be a good investment? A. Yes, sir.

Q. Did you go down there and make that entry on
474 your own motion? A. Yes, sir.

Q. You were acting for yourself in that matter? A. Yes, sir.

Q. Not representing anybody else but yourself? A. No, sir.

Q. You borrowed the money from the Martin-Alexander Lumber Company to pay for the land and part of your expenses, just like you borrowed money from them on other occasions? A. Yes, sir.

Q. You regarded yourself good for what you borrowed, didn't you? A. Yes, sir; what money I borrowed I counted on paying. I counted it the same as if it had been any other debt.

Q. You had property outside of that land? A. Yes, sir; I have some property. I did at that time have a little down here, but I have disposed of it at this time. I did at that time, and I had some teams and was teaming out there.

Q. After you bought the land and paid for it, did you feel at liberty to sell the timber on it again? Yes, sir.

Q. If anybody else had come to you and offered you more than the Martin-Alexander Lumber Company had offered you, would you have sold it to them? A. Yes, sir; I would have sold it to the man I got the most out of it.

Q. There was no agreement or promise of any kind that you would let them have it? A. No, sir.

Q. Why did you talk to Mr. Copeland, or Uncle Jim? A. Uncle Jim was there and was woods foreman before that.
475 I knew he entered land, and I thought he knowed right smart about it more than I did. I just talked about it.

Q. As a matter of fact, was he not generall- consulted about it? A. Yes, sir; we all went to Uncle Jim for advice. I did, and others too.

Q. You went to him because you thought he knew? A. Yes, sir. He had been surveyor, and I didn't know anything better.

Q. He knew the lay of the land and you didn't? A. Yes, sir.

And further the witness saith not.

476 Lawrence C. Horne, a witness called for the Government, being duly sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Question. What is your name? A. L. C. Horne.

Q. Where do you live? A. At Lester, Arkansas.

Q. Where did you live in 1900? A. At Pike City.

Q. What were you doing there at that time? A. I was assistant foreman.

Q. In what? A. Planing mill.

Q. For whom? A. For the Martin-Alexander Lumber Company.

Q. Did you make any entry of Public Lands in Pike County? A. Yes, sir.

Q. During the summer of 1900? A. Why, yes, I believe it was.

Q. How did you come to make the entry: how was your attention drawn to that? A. Why, by the publication there in the paper of men that was entering land.

Q. What did you do then in regard to the matter? A. I believe I—no, first I said something to Mr. Copeland's girl about it, and she said that he was—

Judge Read. Never mind what she said.

Q. Did Mr. Copeland tell you anything about it? A.
477 Yes, sir.

Q. Did you go to him, or did he come to you? A. I met him just as he came out of the blacksmith shop one day, and he asked me, I believe, if I wanted to take up that land. I suppose his girl had said something to him about it, that I was wanting to; and I told him yes, I did; and he said, that is all right that he would show me where it was, or something of that kind.

Q. Did you have any further conversation with him? A. Why, yes, sir.

Q. In regard to the land? A. Yes, sir.

Q. What was it? A. I told him I didn't have money enough to take up the land.

Q. How much money did you have? A. I didn't have any.

Q. Why did you mention that and tell him you didn't have money enough? A. I wanted to get some.

Q. Tell the rest of the conversation. A. He said he could get it for me.

Q. Did you go out and look at the land? A. Yes, sir.

Q. Who went with you? A. I did for one, and Mr. Waits for another.

Q. You went in the party with Mr. Waits, did you? A. Yes, sir.

Q. Did Mr. Copeland tell you anything about the law with regard to that? A. No, sir; I don't think he did at all.

Q. You didn't ask him anything about it, and he
478 didn't tell you? A. No, sir.

Q. Nothing further said about the money? A. No, sir; I don't think there was.

Q. You went with the party to go to Camden the first time, did you? A. Yes, sir.

Q. Who paid your expenses on that trip? A. He did.

Q. Who did? A. Mr. Copeland.

Q. Was he with you? A. I suppose.

Q. Was he with you? A. The first time?

Q. Yes, sir. A. No, sir; he didn't go.

Q. Did he give you the money? A. Yes, sir.

Q. Where did he do that? A. I believe it was at the depot at Pike City.

Q. Did he give you the money for the expenses of any one besides yourself? A. Yes, sir; I believe he did.

Q. For how many? A. I don't know just how many; there was five or six.

Q. The whole party? A. Yes, sir.

Q. Mr. Waits too? A. Yes, sir.

479 Q. You paid the expenses for them? A. I gave them the money, or they paid.

The Court: Was that the first trip down?

The Witness: On the first trip down.

Q. You went down to Camden and made your application, did you? A. Yes, sir.

Q. Is the paper I now show you the application you made then? A. Yes, sir; I suppose it is.

The application referred to was here introduced in evidence, it being in words and figures following, to-wit:

* * * * * *

480 Q. Did you get a proof of publication or notice for publication? A. Yes, sir.

Q. What did you do with that—carry it back to Pike City? A. I don't know, sir.

Q. Who got the notices for the other members of the party? A. I think they did. I am not sure.

Q. What did you do with your notice? A. I took them back to Pike City and I gave them—gave it—to Mr. Duncan Nash for publication.

481 Q. Who paid for that notice of publication, the publication of it? A. Mr. Copeland, I suppose.

Q. At the expiration of the time, sixty days, I believe it was, did you go back to Camden? A. Yes, sir.

Q. Did the same party go with you that went the first time? A. Yes, sir.

Q. Where did you get the money for expenses at that time? A. Mr. Copeland, I believe, gave me the money for expenses.

Q. That was the time you had to pay for the land? A. I am not sure, but I believe he gave me the money for expenses.

Q. How about the money to pay out the land? A. Mr. Martin gave me that.

Q. How much did he give you? A. Twenty-one hundred dollars, I believe.

Q. That was for each member of the party, yourself included? A. Yes, sir.

Q. Did he give you anything else? A. He gave me notes for them to [sing] when I gave them the money.

Q. They were to sign the notes before the money was taken in at the Land Office? A. I believe part of them—I gave them all the notes; I didn't take all the notes back, but one or two of them; they took their own notes back.

Q. You got a receipt for the money that was paid in? A. Yes, sir.

Q. The paper I now show you is the receipt you got?
482 A. That is the same; yes, sir.

The receipt referred to is here introduced in evidence, being in words and figures following, to-wit:

* * * * * * * * *

Q. At the same time you made the proof, didn't you, that was required? A. Yes, sir.

Q. Was the paper I now show you that proof? A. Yes, sir.

Mr. Youmans: The proof is also introduced.

The proof referred to and introduced is in the words and figures following, to-wit:

* * * * * * * * *

485 Q. What did that note cover that you signed? A. I don't remember just the amount. I- was something over $400, though.

Q. When you went back to Pike City what did you do with the note and the receipt. A. I kept the receipt for a few days.

Q. What did you do with it then? A. I don't remember. I gave it to somebody. I don't remember now. I don't remember who it was.

Q. What did you do with the note? A. I gave the note to Mr. Alexander or Mr. Martin.

Q. Did you give either one of them the receipt also? A. I think so, yes sir.

Q. Why did you give it to them? A. I think that,—let us see,—

Q. Cannot you think whether you gave it to them at the same time? A. At the same time, I did,—

Q. The note? A. Yes sir, I believe I did.

Q. Why did you give it to them? A. I don't know sir, hardly. I suppose just to keep.

Q. Did you make any disposition of the timber on that land? A. Yes sir.

Q. When? A. All about the same time.

Q. You mean at the same time you gave them the note? A. Yes, sir.

Q. What did you do with regard to the timber? A. I sold them the timber off the land to cancel the note.

Q. To the Martin-Alexander Lumber Company? A. Yes sir.

486 Q. At the same time you gave the note? A. I think maybe it was the next day, or two days or something like that.

Q. You gave the note and the next day or two you gave this contract for cancelling the note? A. I don't remember.

Q. Was it not six months? A. Six months or a year.

Q. So it was settled a day or two afterwards, was it? A. Yes sir, I sold the timber and the note was cancelled.

Q. And made a contract, did you, to sell them the timber on that land? A. Yes sir.

Q. What did you finally do with the land? A. I sold it.

Q. To whom? A. I believe that was to the Detroit Timber & Lumber Company.

Q. What did you get for it? A. $25.

Q. What became of your contract? A. Which?

[A.] The contract that you had made with the Martin-Alexander Lumber Company. A. They had the contract.

Q. Who did? A. The Martin-Alexander Lumber Company: they had the contract for the timber.

Q. And the note: did they take that too? A. You mean that final receipt or the note?

Q. No sir. A. The note was cancelled when I sold them the timber.

487 Q. What was done with it? A. They tore it up and cancelled it. I believe I seen Mr. Alexander [cabcel] it himself.

Q. Why didn't you take it? A. He marked "paid" on it.

Q. Why didn't you take the note? A. I don't remember now. He might have torn up the note and thrown it down.

Q. I asked you if you know what he did with it? A. No sir.

Q. I believe you said that you were in the employ of the Martin-Alexander Lumber Company? A. Yes sir.

Q. Did you employ Mr. Copeland to go out with you to examine that land? A. No sir.

Q. What did you give him? A. No sir. I asked him to show me the land.

Cross-Examination

By Judge Read:

Q. Did anybody persuade you to enter this land? A. No sir.

Q. You entered it on your own motion, did you? A. Yes sir, as well as I remember.

Q. You entered it because you wanted to buy some of the land? A. Yes sir.

Q. Why did you want to buy the land? A. Like anyone else.

Q. You thought there was some profit in it? A. Yes sir.

Q. And that is the reason you did it? A. Yes sir.

Q. I believe you stated in your application that the timber on that land was worth $3. an acre, didn't you? A. I
488 don't remember.

Q. In your proof, I mean. A. I don't remember that now.

Q. If the timber on the land was worth $3., the land and timber all together were worth more than $2.50? A. Yes sir.

Q. You stated "the estimated market value of the timber standing on this land was about $3.?" A. Yes sir.

Q. And you were paying at the rate of $2.50 an acre for it? A. Yes sir.

Q. You believed that was a correct estimate at the time you made it, didn't you? A. Yes sir.

Q. Then you entered on the land because you wanted to make an investment of that kind: you saw the opportunity you thought to make some money out of it? A. Yes sir.

Q. At the time you entered the land or up until you made this timber contract with the Martin-Alexander Lumber Company, had there been anything said to you or anybody about giving a contract to anyone for the timber on the land? A. No sir.

Q. Or entering the land for the Martin-Alexander Lumber Co.? A. No sir.

Q. Nothing of that kind had been said about it? A. No sir.

Q. There had been no reference to anything of that kind? A. No sir.

Q. As a matter of fact when you went down there you were representing yourself and not representing anybody else? A. Yes sir.

489 Q. You were not the agent of the Martin-Alexander Lumber Company, but simply went down there because you wanted to make an entry and buy that much land? A. Yes, sir.

Q. You did borrow the money from the Martin-Alexander Lumber Company, to make the entry and pay your expenses? A. Yes sir.

Q. And gave a note? A. Yes sir.

Q. And afterwards the timber contract was given by you to cancel that note? A. Yes sir.

Q. And subsequently,—how long afterwards was it you sold the land? A. Something about a year.

Q. Something about a year after that you sold the land to the Detroit Timber & Lumber Company for $25.? A. Yes sir.

Redirect Examination

By Mr. Youmans:

Q. You had to pay $2.50 an acre and that made $400. for the land? A. Yes sir.

Q. You paid $10. fees for the Register and Receiver? A. Yes sir.

Q. And paid $1.50 for the testimony fee, and paid your own expenses down there? A. Yes sir.

Q. How much did you pay for the notice of publication? A. I don't remember. It seems like it was $10.: but I don't remember the exact amount.

Q. How much did you pay for your expenses in making the two trips? A. I don't know, sir, now; about $7.,—four-
490 teen for the two trips,—something like that,—ten or fifteen dollars, I suppose.

Q. So that you made an expense of about $30, or $40 there, didn't it that you were put to in addition to the $400.? A. Yes sir.

Q. And the timber off the land was worth $3.00 an acre? A. Yes sir, I suppose so; I never estimated it, of course.

Q. That is what you said in your proof. That it was the estimated value,—didn't you make an estimate of it? A. Yes sir, some of it. I estimated it. I guessed at it.

Q. That is what you meant? A. Yes sir.

Q. So that, as a matter of fact it cost you in the neighborhood of $440.; and the timber was worth $3. an acre. What was the land worth without the timber? A. I don't think, sir, the land is worth six bits or a dollar an acre.

Q. And you sold it and got $25. for it? A. Yes, sir.

And further the witness saith not.

491 James F. Patterson, a witness called for the Government being first duly sworn testified as follows:

Direct Examination

By Mr. Youmans:

Q. What is your name? A. James F. Patterson.

Q. You live in Pike County? A. I don't now. I have.

Q. Did you live there in the fall of 1899? A. Yes sir, I think so.

Q. What were you doing at that time? A. Working for the Martin-Alexander Lumber Company.

Q. What work were you doing? A. I was team foreman. Team boss. In other words, you may say barn boss.

Q. Did you make an entry of public lands in Pike County about that time? A. Yes sir.

Q. How did you come to make that entry? A. I seen it advertised in the papers where others had entered up.

Q. Did you talk to anybody about it? A. Yes sir, I talked to a few about it.

Q. To whom? A. I talked to Mr. Copeland for one.

Q. What did you say to him about it? A. I asked him about it and his advice.

Q. What did he advise you to do? A. I don't remember just what he said about it, but he seemed to think if I wanted the land I could get it.

Q. Was that all that he said? A. No sir, we ta-ked on further and I told him I believed I would take up some if I could get the money and he told me he thought that he could get the money for me or let me have it.

Q. That was all that passed between you at that
492 time? A. Yes sir, I guess so.

Q. What was the next thing? A. A trip to Camden.

Q. Didn't you have any more definite understanding or arrangement before you went to Camden? A. No sir, I don't think there was anything more understood.

Q. Did you go out on the land? A. Yes sir.

Q. Who went with you? A. Mr. Copeland.

Q. What for? A. To look at the land.

Q. Who was in the party? A. Guy Winslow and his wife, Joseph O. Means and his wife and myself.

Q. Five of you? A. Yes sir.

Q. Did Mr. Copeland go with you? A. Yes sir.

Q. Who paid the expenses? A. Mr. Copeland, I suppose.

Q. Did you have an understanding with him in regard to that? A. Yes sir, I borrowed the money and he was to pay my expenses down there.

Q. When you went down there you made an application, did you? A. Yes sir.

Q. Is the paper I now show you your application? A. Yes, sir.

Mr. Youmans: I introduce the sworn testimony of James F. Patterson, dated June 22, 1899.

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494 Q. You got a notice of publication did you? A. Yes sir.

Q. What did you do with that notice? A. I gave it to Mr. Copeland.

Q. What for? A. I had no place to keep it.

Q. What did you want to keep it for? A. Oh, the notice of publication?

[A.] Yes sir. A. I don't really know what I done with that.

Q. Didn't you give it to Mr. Copeland? A. It seems to me like I did, I am not certain.

Q. Did you tell him to have it published? A. I did, yes sir.

Q. Your party met sometime afterwards, and went down to the land office? A. Yes sir.

495 Q. You borrowed the money? A. Yes sir.

Q. Where did you get the money? A. From Mr. Copeland.

Q. Where? A. In Camden.

Q. He went with you the second time? A. Yes sir.

Q. Did he pay the expenses at that time? A. Yes sir.

Q. Did you take anything else in Camden besides taking the money from him? A. I gave him my note.

Q. When was that note payable? A. As well as I remember it was possibly six months after it was given.

Q. You got your final receipt, did you? A. Yes sir.

Q. Is the paper I now show you your final receipt? A. Yes sir.

Mr. Youmans: I wish to introduce the final receipt of James F. Patterson, dated October 13, 1899:

* * * * * * * * *

496 Q. What did you do with that receipt? A. Which, the final receipt?

Q. Yes sir. A. I gave it to Mr. Copeland to keep for me.

Q. While you were at Camden? A. Oh, no.

Q. When? A. When I came back home.

Q. Did you make any disposition of the timber on that land? A. At what time?

Q. At any time. A. I did later on.

Q. How much later? A. I could not say now. I don't remember.

Q. Was it weeks or months? A. It was months, I suppose.

Q. About how much afterwards? A. After I came back?

Q. Yes sir. A. I think it was longer than that.

Q. How much longer? A. I could not say for I don't remember. I had all the work I could do in the barn.

Q. Had you had any talk with him about the making any disposition of the timber? A. At what time?

Q. At any time. A. Yes sir, I did later on. Sometime after I got back.

Q. Have you any idea how long afterwards? A. No sir, I have not.

Q. Your receipt was dated October 13, 1899: was it before the first of January of the next year that you had a talk with him? A. Yes, sir, I suppose it was.

497 Q. Did you make a contract with him before the first of January? A. To sell him the timber?

Q. Yes sir. A. Yes sir, I guess I did.

Q. Was this paper that I showed you the contract that you made? A. Yes sir that is it.

Q. You notice that is dated on the 10th of September, 1900. A. Yes sir.

Q. Was it as late as that? A. That I made that contract?

Q. Yes sir. A. Why, I don't remember nothing about this paper.

Q. You said you made a contract prior to the first of January, 1900? A. I am not certain.

Q. You think this was the correct date? A. I cannot say.

Q. You notice this difference in regard to the month September 10th.—that is a different handwriting from the other handwriting in the paper. A. Yes sir.

Q. You don't know when that was executed? A. I could not say positively, no sir.

Mr. Youmans. I desire to introduce this contract.

The timber contract of witness Patterson dated the 10th of September, 1900 was considered in evidence.

Mr. Youmans. This contract is the same as the contract that has been heretofore introduced, with the exception of names, dates and the description of the land.

498 Q. That was the same land that you entered was it? A. Yes sir.

Q. What became of that note? A. It was cancelled.

Q. Do you mean by that that you paid it off? A. I paid it off with the timber on the land.

Q. It was cancelled when you executed this contract? A. Yes sir.

Q. What was done with the note: it was cancelled you say? A. Yes sir.

Q. Did you take it? A. No sir, I don't think I did.

Q. Who took it. A. I don't know. It was lying on the desk and I just left it there.

Q. It was not given up at all: what did you afterwards do with the land? A. I sold the land later on.

Q. To whom? A. To one Mr. Elrod of Pike City.

Q. For how much? A. For $25.

Q. That is all you ever got out of it? A. Yes sir.

Q. Your contract is this: "In consideration whereof the said purchaser doth by these presents promise and agree to pay unto the said vendor, his heirs, executors, administrators and assigns, the sum of Fifty Cents for each and every one thousand feet of lumber, scale measure, contained in the logs or timber which shall be cut by it upon said land. And it is admitted that the said purchaser has at the date of the execution and delivery hereof, paid on account of such purchase price the sum of four hundred dollars ($400), the receipt
499 of which is hereby acknowledged; the balance thereof, should there be any beyond the amount above stated and 8% interest per annum on the said four hundred dollars ($400) shall be payable in monthly payments at the end of each month as the timber or lumber from time to time is cut and removed from said premises.

Q. That left you in debt to that company of $400. to be paid for in timber if there was enough of it? Was there enough? A. I suppose there was.

Q. Do you know anything about that? A. No sir.

Q. Wasn't your note for more than $400.? A. I don't remember what the note was for.

Q. Wasn't the amount of money that you borrowed $400.? A. That is what I borrowed to pay for the land.

Q. Wasn't the amount of the expenses and the fees of the land office included in that note, making it $427.? A. It was somewheres betwen four hundred and four hundred and fifty, as well as I remember.

Q. Did you get an account or a statement of the timber cut off the land? A. No sir.

Q. When did you sell it? A. I sold it, I reckon, last June was a year ago.

Q. 1900? [—] Yes, sir.

Q. To Mr. Elrod? A. Yes sir

Cross-Examination

By Judge Read:

Q. Who is Mr. Elrod? A. He was a drugstore keeper in Pike City at that time.

Q. I believe you stated that you gave a contract, some time after you came back from Camden after you made
500 your final payment for the land: your recollection was

it was within a month or two after that; is that true? A. I don't remember how long it was.

Q. You said you thought it was the first of January of that year. A. Yes sir.

Q. In order to refresh your memory, I will ask you if it is not true that you did give a contract at that time and afterwards Mr. Copeland came to you and told you he wanted you to execute this contract and that it was the same as the other one except the dates, and he wanted you to execute this contract because your patent had been issued in the meantime, and he wanted a contract from you after the patent was issued? A. Yes sir, I believe there was something said about that.

Q. You had forgotten about that? A. Yes sir.

Q. That is a fact, that you did give two contracts, the first one a month or two afterwards or somewheres about that time and the second one was given after the patent was issued and that you gave it to Mr. Copeland? A. Yes sir.

Q. You say, I believe, that you found out about this land being entered or that it was open to entry or purchase under the Timber and Stone Act, and you went to Mr. Copeland to inquire about it? A. Yes sir.

Q. You went to him to make application to him to obtain information from him? A. Yes sir.

Q. Did he give you the information? A. Yes sir.

Q. Did you state to him to know whether you could borrow the money? A. I told him, I believe, that I could take
501 up some of the land if I could get the money to pay for it and he said that he could get the money or let me have it, or something of that kind.

Q. Then your idea was if you could borrow the money to pay for the land and pay for the expenses attaching to it, you wanted to buy 160 acres of that land? A. Yes sir.

Q. Did you think the land was worth more than the Government was asking for it? A. If I hadn't thought that I wouldn't have bought it.

Q. In other words you thought it was a good investment for you? A. I thought I might realize something out of it.

Q. When you went down there to pay the land out, I believe you said you got the expenses from Mr. Copeland, or who paid your expenses down there? A. Mr. Copeland.

Q. That, you understood, was to be charged up to you, but these outlays you don't know whether they went into the note or not? A. No sir.

Q. You don't remember that fact? A. No sir.

Q. It has been some time ago and it slipped your memory? A. Yes sir.

Q. The expenses that were advanced to you were to be repaid by you as well as the $400.? A. Yes sir.

Q. Did you all execute the notes down there at Camden for this money or did you wait until you got back to Pike City? A. You mean sign the notes?

Q. Yes sir. A. I signed mine in Camden.

502 Q. Do you know whether the others signed theirs there or not? A. No sir.

Q. I believe you said when you came back with the final receipt, you gave that, you say, to Mr. Copeland to keep for you? A. Yes sir.

Q. Why did you give it to him to keep for you? A. Because I had no place to keep it myself, and I was afraid it would get destroyed and I knew if he had it he would put it in his papers, wherever they might be,—probably in the lumber company's safe.

Q. Was there any safe in Pike City except the lumber company's safe? A. I don't know if there was. Theirs was a large safe and I knew there was plenty of room.

Q. You had no other place to keep it yourself? A. No sir.

Q. In making this entry down there, going down there to enter this land, did you go for yourself in your own behalf, or were you representing somebody else? A. Representing myself.

Q. Were you under any obligations to anyone or was anyone interested with you? A. No sir.

Q. Had you made any contract, promise or agreement with reference to entering that land, with the Martin-Alexander Lumber Company, or to give them the timber on it? A. No sir, nothing was ever said to me.

Q. You were not under obligations to anybody? A. No sir.

Q. And you felt free to sell that timber to anybody you wanted to after you got your final proof? A. Yes

503 sir.

Re-Examination

By Mr. Youmans:

[—] You say that Mr. Copeland came to you and asked you to sign another contract and take up the other contract that you had signed? A. Yes sir.

Q. You did not recollect about any other contract when I questioned you,—no previous contract? A. No sir, not at that time.

Q. You remember it now, do you? A. Yes sir, I think I do.

Q. When was that contract signed? A. Which one is that?

[A]. The first one. A. It was a month or so after I came back.

Q. Do you remember where you signed that? A. Where I was when I signed it?

Q. Yes sir. A. I think I was on the lumber yard.
Q. Who brought it to you? A. Mr. Copeland.
Q. What did he say to you? [—] I don't remember now.
Q. Had you told him to bring it to you? A. No sir.
Q. You just signed it without any words? A. No sir. He said that he had a contract,—I forget what he called it,—he said he wanted me to sign it and I looked over it.
Q. I didn't ask you about that; I am just asking you about the circumstances of your signing it: he didn't say anything to you, but he just presented it to you and you signed it?
504 A. He said something to me.
Q. What was it? A. I don't remember.
Q. Was it that time the note was cancelled or was it this time? A. The last one, I think.
Q. You stated that this contract was just like the first one with the exception of the date, didn't you? A. Did I say it was just like it?
Q. That is what I understood you to say. A. I don't remember.
Q. You say Mr. Copeland told you it was that. A. Yes sir.
Q. You don't know whether it was at this time or the first time that the note was cancelled? A. No sir.
Q. It was either at one or the other? A. Yes sir.
Q. And he said that the reason that he wanted you to sign that contract was because the patent had come? A. Yes sir, something of that kind.
Q. Wasn't the patent coming to you? A. It did come to me, I suppose.
Q. Didn't you know that it had come? A. Yes sir.
Q. You knew that it had come? A. Yes sir.
Q. Didn't he give any other reason? A. No sir.
Q. Didn't he say what necessity there was for another contract? A. I don't remember.
Q. Did you get the patent from the land office? A.
505 It came with a package of others. I got the patent from Mr. Copeland.
Q. At the time you signed this contract? A. I don't remember whether I got it at that time or not.
Q. You say that you don't remember whether the expenses went into the note or not? A. The expenses to Camden and back?
[A]. Yes sir. A. No sir, I don't believe I do. I think they were to be charged to my personal account.
Q. Were you to pay them on the outside? A. Yes sir.
Q. And these expenses amounted to about twenty-seven or twenty-eight dollars, didn't they? A. I think so.
Q. You got $25. for the land, so that you lost by the operation. A. Yes sir, I would consider it.

Q. Instead of making anything by it you lost? A. Yes sir.

And further the witness saith not.

506 Charles W. Fuller, a witness called for the Government, being first duly sworn testified as follows:

Direct Examination

By Mr. Youmans:

Q. What is your name? A. Charles W. Fuller.

Q. You live at Pike City? A. Yes sir.

Q. Where did you live in 1900? A. I lived at Pike City.

Q. What were you doing at that time? I was a lumber sawyer or lumber grader.

Q. For whom? A. The Martin-Alexander Lumber Company.

Q. During that time did you make an entry of public land in Pike County, Arkansas? A. Yes sir.

Q. What brought that to your attention? A. The people in general were taking up the land.

Q. Employees of the Martin-Alexander Lumber Company? A. Some of them were and some were not.

Q. Who were not? A. I don't think my brother, Stephen A. Fuller was.

Q. Anybody else? A. I don't remember just now; I think there were some others.

Q. He is the only one you recall at this time? A. That I recollect.

Q. All the rest of them were employees working there for the Martin-Alexander Lumber Company? A. I kind of think so.

Q. Did you go out and examine the land? A. Yes sir.

Q. Who did you go with? A. I might have (refer-
507 ring to paper) I have it down. (reading) H. B. Hughes, Bedford Patterson, Emmett Keebaugh, Robert Ebbs.

Q. Did Ebbs make an entry? A. He started to but from some cause he didn't.

Q. He did not complete it? A. No sir.

Q. Was anybody else with you? A. Brother Copeland.

Q. You went down there to make an examination of the land? A. Yes sir.

Q. For what purpose? A. For the purpose of taking it up under the Stone and Timber Act.

Q. For the purpose of being able to state in the affidavit that you had gone out and looked at it? A. Yes sir.

Q. How long after that did you go to Camden? A. I don't remember. Perhaps two or three days after that.

Q. Did all of that same party go? A. Yes sir.

Q. Was the application that I now show you,—is that your signature? A. (Referring to paper) That seems to be my signature. I see one mistake, but that won't make any material difference. I think I remember that I told him 45 and he has got 44 years of age. I believe that is the only mistake I see.

Q. Otherwise it is all right? A. It seems to be, yes sir.

Mr. Youmans: I will introduce his sworn statement, dated February 15, 1900.

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509 Q. Who paid your expenses in going down there? A. Emmett Keebaugh paid mine. When we went out and looked at the land I told Emmett,—I never made any contract with anyone. I never spoke to anybody with regard to this,—I didn't have the money to make the entry. I didn't have anything to pay my way; and he said he would get the money.

Q. Did you speak to Mr. Copeland about it? A. No sir. He said he would see that I got the money.

Q. He was the only one that you spoke to? A. Yes sir.

Q. You got the notice of publication? A. Yes sir.

Q. What did you do with it? A. We brought it back to be published.

Q. Did you have it done yourself? A. I reckon we did. Emmett did. I gave it to Emmett to have it done.

510 Q. Did you pay for that notice? A. Yes sir.

Q. When? A. That was charged up in a private account against us, or open account, whichever it was.

Q. At the expiration of the time stated in the notice you went to Camden again, did you? A. Yes sir.

Q. With the same party? A. I believe Ebbs didn't go. The other parties all went.

Q. Who had the money? A. Emmett Keebaugh.

Q. Did you sign any note before you went to the land office to prove up? A. Yes, sir.

Q. Who had the note? A. Emmett Keebaugh, as well as I recollect. It was at the Ouachita Hotel I got the money.

Q. You made your proof there did you? A. Yes sir.

Q. The paper I now show you is the testimony you gave yourself in proving up the land? A. I think that is correct, yes sir.

Mr. Youmans. I will introduce that proof without reading it. It is the final proof of Charles W. Fuller, and is dated May, 2nd 1900.

* * * * * * * * *

513 Q. The paper that I now show you is the receipt that you got for your money? A. Yes sir.

Mr. Youmans: I will now introduce the final receipt of Charles W. Fuller, dated May 2nd, 1900.

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514 Q. Emmett Keebaugh had your note? A. Yes sir.

Q. What did you do with your receipt? A. As we all came up,—I was working, of course, in the interest of the company, for them, and I turned over the receipts to Emmett. We all, I think, turned the receipts over to Emmett to keep them until we were notified that our patents were issued.

Q. The question is, did you keep any other of your papers there? A. I don't remember now.

Q. What was the next thing you did with reference to that land? A. I finally sold it to them.

Q. When? A. It must have been about April, 1901. About the first of April, as well as I remember.

515 Q. To whom? A. I sold it to the Detroit Timber and Lumber Company.

Q. Did you make any timber contract with the Martin-Alexander Lumber Company? A. I think I did, prior to that time.

Q. Don't you know whether you did or not? A. Yes sir, I did.

Q. How long prior? A. I could not tell you just now.

Q. How long after you had gotten your receipt at the land office? A. I don't know just exactly, I could not say positively. It may have been a couple of months or it may have been three.

Q. You got your receipt May 2nd, 1900? A. Yes sir.

Q. It may have been August do you think? A. Yes sir, it may have been August. Brother Copeland came around and says, "If you want to,"—I was grading then,—he says, "Brother Fuller if you want to you can settle that note now and we have a timber contract here, and you can release that note." Of course I wanted to get shut of the purchase money and I asked him, "Brother Copeland, is there any possible show for me to get into trouble over this? I want to do it." He says, "None whatever, Brother Fuller," and I signed the timber contract.

Q. What was done with the note? A. He told me that he would see that the note was cancelled. He assured me. I have know him for years. I did not see that note, and I have not seen it yet.

Q. Why did you make that remark about getting into trouble? A. I did not know what the result might be.

Q. You never saw the note afterwards? A. No sir.

516 Q. What have you done with the land? A. I told you a while ago I sold it.

Q. To the Detroit Timber and Lumber Company? A. Yes sir.

Q. What did you get for it? A. The further consideration of $25.

Q. What do you mean by that? A. I paid $400. in that timber contract.

Q. And you paid expenses too, didn't you? A. Yes sir.

Q. And you got $25. in money out of it? A. Yes sir.

Q. Did your time go on with the company while you were gone to Camden? A. No sir.

Q. They took it off, did they? A. Yes sir.

Q. You lost that? A. Yes sir.

Cross-Examination

By Judge Read:

Q. You stated, I believe, that you first understood this land could be entered from seeing other people buy it? A. Yes sir, that is the way I came into possession of the knowledge. I hardly ever read a paper of any kind.

Q. You went to some one and inquired about the matter, did you? A. Yes sir.

Q. Did you talk to Mr. Copeland about it? A. No sir, I never did, except the day before we went up to look at the land. He was passing by where I was grading lumber, and I halted him and asked him something in regard to taking up this land, and he says, yes, and there was a lot of the boys
517 going out to-morrow and he says you get ready and go out.

Q. Did you go out with them? A. Yes sir.

Q. Before you spoke to Mr. Copeland at all, you had heard men talking about taking up that land? A. Yes sir.

Q. You had been thinking about it for some time? A. Yes sir.

Q. And had made up your mind, if you could buy some, you wished to do it? A. Yes sir.

Q. Who was it you spoke to about getting the money? A. Emmett Keebaugh?

Q. You told him that you didn't have the money to pay for your land, or your expenses? A. Yes sir.

Q. And he told you that he could get it for you? A. Yes sir.

Q. And you went to Camden the first time and he went with you and paid your expenses? A. Yes sir.

Q. You got the notice for publication there and brought it back home and it was published? A. Yes sir.

Q. And your understanding was it was to be charged up against you too? A. Yes sir.

Q. When you went down to make the final payment who went with you? A. Emmett Keebaugh.

Q. After you got the money down there at Camden and paid the amount due for the land,—$2.50 an acre,—you
518 executed your note? A. Yes sir.

Q. And came back? A. Yes sir.

Q. Then you got your final receipt? A. Yes sir.

Q. Up to that time did you have any other conversation with Mr. Copeland or anybody else with reference to this land except what you have stated? A. No sir.

Q. Had you, up to that time, made any contract, agreement or promise of any kind with anybody with reference to the land? A. No, sir.

Q. Up to the time you got your final receipt and paid for this land you were under no obligations to anybody? A. No sir, I did not think so.

Q. You asked him that question when he came to you to sign the timber contract? A. Yes sir.

Q. You understood by signing that timber contract that that would get rid of that note and your indebtedness to the company, for your expenses? A. Yes sir

Q. You signed it for that purpose? A. Yes sir.

Q. Before doing so you asked him if it was right for you to do it? A. Yes sir.

Q. You stated at the time you went down there and made your application and swore to it, that there was no one interested besides yourself? A. Yes sir.

Q. That is true? A. Yes sir.

519 Q. Mr. Youmans asked you this question,—you stated when you came back,—he asked you something about the final receipt, and asked you what you did with it and you stated and said, "I was working, of course, in the interest of the company, and I didn't want to keep it and I gave it to Emmett Keebaugh to keep." What did you mean by saying that you were working in the interest of the company? A. I was a laborer.

Q. You mean that you were a laborer in the employ of the Martin-Alexander Lumber Company? A. Yes sir.

Q. The company had no interest in this land? A. No sir.

Q. You did not mean to put that construction on it? A. No sir.

Q. As a matter of fact the company had no interest in this land? A. No sir.

Q. And you would have felt free to make a contract with anybody else who would have paid you more money for it, wouldn't you. A. Yes sir.

And further witness saith not.

520 Henry M. Lintz, a witness called for the Government, being first duly sworn testified as follows:

Direct Examination

By Mr. Youmans:

Q. What is your name? A. Henry M. Lintz.

Q. Where do you live? A. I live at present at Welburn, in Clark County, but was living in Pike.

Q. During the year 1900? A. Yes sir.

Q. What were you doing at that time? A. I was what was called the woods boss for the Martin-Alexander Lumber Company.

Q. Did you make an entry of public lands during that time? A. Yes sir.

Q. How was the matter of entering the lands brought to your attention? A. Under that present act that we are referring to?

Q. Yes sir. A. Mr. Copeland first called my attention to the fact that I was entitled to make an entry of that kind. Mr. Copeland and I were both in the employ of the company and were very much together and he and I were in the woods one day and he made the remark, "Why don't you make an entry?" and I told him I didn't have any right under the homestead law and that I didn't know that I would have any right to make any entry under any other act.

Q. Was there any other conversation there at that time between you and Mr. Copeland? A. I don't know to what extent the conversation was carried on, but we did discuss some kind of a law and what my right would be under the law: and I did not know but I told him that I would see about it. Now, if you will allow me I will say that I was satisfied that if I had that right that I would have it but once in my life
521 and I wanted to make the best of it because I didn't know that I would have the right there again.

Q. What did he tell you your rights were? A. That I had the right to 160 acres of land by paying $2.50 an acre and making an affidavit that the land was not valuable for agricultural purposes.

Q. Valuable chiefly for the timber and stone? A. Yes sir.

Q. He told you those things did he? A. Yes sir.

Q. Did he say anything about getting the money with which to make the entry? A. Not at that time.

Q. You had a later conversation with him, did you? A. After I had studied the matter over and thought about it and finally concluded that I thought I would make the entry, I told him that I believed I had made up my mind to make the entry, if I could get the money; That I did not know exactly where I was going to get the money; and he told me that I could borrow the money of the Martin-Alexander Lumber Company at the time.

Q. Was he working for the Martin-Alexander Lumber Company then? A. Yes sir. He was the timber man.

Q. He said he thought you could? A. I think that was about the language he used. I told him I knew he was acting in the capacity of buying timber for them; and I asked him if he would see about it,—well, I authorized him to do it, because I had made up my mind.

Q. Was there any talk between you as to how it would be paid back? A. I think not. I don't think there was any talk about it.

Q. Did you have any further conversation then with
522 him? A. I could not say. We were in the woods a great deal together, but I don't know as I had any particular conversation with him about it.

Q. You had told him to see about it? A. To see about the money.

Q. Did he see about it? A. Yes sir, he saw about it. I wanted, myself, to look up the timber and I asked him if he would furnish the money, and I asked him to let me have it and let me look up the land so as to make an entry that would be satisfactory.

Q. He furnished you the plat did he? A. Yes sir. I don't know as he furnished the plat. He furnished me the numbers and that was plat enough,—the numbers of the land.

Q. That were vacant? A. Yes sir.

Q. Did you have any conversation with him about the money? A. I could not say just what time it was, but when I told him I had finally made up my mind about the land he told me then that he could make arrangements for the money.

Q. Didn't your wife make an entry too? A. Yes sir.

Q. Didn't you talk to him about your wife? A. He told me she had rights at the same time.

Q. Where were you when you both talked over it? A. I don't think I can tell you, because he was sometimes at my house and sometimes we were in the woods, and sometimes in the store at Pike City. I don't think I could tell you the place.

Q. At the time he talked to you and your wife together you were at home then weren't you? A. I am not so sure that he did talk to her but I think he did because she went with us to look at the timber, but I want to say that he had a con-
523 versation with her in regard to it at the time we went to the woods.

Q. You made all these arrangements, then, did you? A. In regard to the money?

Q. Yes sir. A. Yes sir, I might say I made all the arrangements.

Q. You went to the woods,—How many of you went? Mr. Copeland, I believe, and his son? A. I am not sure whether

he went or not. My wife and myself and that would be all that I know of.

Q. You went to look at the land? A. Yes sir.

Q. Then you went to Camden to make application? A. Yes sir.

Q. Who went? A. There was myself and wife and his son, and Mr. Copeland.

Q. Who paid the expenses? A. Mr. Copeland paid the expenses that day. I paid the expenses one time myself out of my own pocket, and then before we started down, Mr. Copeland bought the tickets. I don't know. I spoke to him about the money before he went and he said he would buy the tickets for the whole party and it would be charged to us when we came back. One trip I paid the money myself, I bought the tickets, but I don't remember which trip it was.

Q. Did you make application at the land office? A. Yes sir.

Q. Is the paper I now show you the application that you made? A. Yes sir, I have no doubt of it, I read it over very carefully at the time. That is my signature.

Mr. Youmans: I will introduce that in evidence:

* * * * * *

525 Q. You got a notice of publication at that time? A. Yes sir.

Q. What did you do with the notice? A. Handed it to the paper at Pike City to have it published.

Q. You handed it to the paper yourself? A. Yes sir.

Q. Did you pay for that notice? A. It was paid by the company and charged to me.

Q. How? On your individual account that you had there? A. No sir, because I requested that my account would be kept separate in that matter.

Q. That was charged to what account? A. I don't know exactly how.

Q. At the time you requested that it should be? A. Yes sir. I wanted to keep that part of the business separate from my affairs. I traded in the store and I didn't want that mixed up with the account.

526 Q. Do you know what that notice cost for publication? A. No sir.

Q. At the expiration of the time you went back to Camden, did you? A. Yes sir.

Q. And you made your final proof? A. Yes sir.

Q. Who had the money? A. At that time?

Q. Yes sir. A. I had it.

Q. Did he give it to you? A. Yes sir.
Q. Mr. Copeland? A. Yes sir.
Q. Did you sign a note for it? A. Yes sir.
Q. Where did you sign that note? A. In the Ouachita Hotel at Camden.
Q. He was there with you was he? A. He counted out the money to me and I signed the note.
Q. What about your wife's money? A. He did the same to her, in the same room at the same time.
Q. She signed the note also? A. Yes sir.
Q. What length of time did that note have to run? A. My recollection is six months. I could not say for certain.
Q. How much was that note for? A. The note I signed was for $400. and my wife's was for $200.

527 Q. Your expenses were not included in that? A. No sir, I mentioned to him about the expenses and he said he would just enter that as an account.

Q. At the time you made your final proof and got your receipt, Mr. Copeland was one of your witnesses wasn't he? A. I think he was.
Q. Is the paper I now show you your final proof? A. Yes sir, that is my signature.

Mr. Youmans: I will introduce that proof in evidence:

* * * * * * * * *

530 Q. The signature I show you on the other proof is Mr. Copeland's, is it not? A. Yes sir, I would say so. I am not well enough acquainted with it to say positively. I think it is his.

Mr. Youmans: I will introduce Mr. Copeland's testimony as a witness for Mr. Lintz also:

* * * * * * * * *

532 Q. You got a final receipt? A. Yes sir.
Q. What did you do with that receipt? A. I took it home with me and kept it until I got notice at the land office that my patent was there and would be delivered to me on the surrender of that receipt.
Q. You sent your receipt down there? A. I took that receipt to Mr. Alexander to know if he knew of anyone going down there so that I could send that receipt down and have my patent brought up. I could have sent it by mail, but I thought that was easier.

533 Q. Have you your patent now? A. I have it at home.

Q. Did you do anything with the timber on that land? A. Yes sir, I sold it to the Martin-Alexander Lumber Company.

Q. Both you and your wife? A. Yes sir.

Q. To whom did you sell it? A. The timber?

[A.] Yes sir. [Q.] Do you mean who I talked to? The sale was made to the Martin-Alexander Lumber Company.

Q. Who did you make the trade with? A. Mr. Copeland.

Q. How long after you came back there from the land office did you make that contract? A. I cannot tell you how long. It was not a great while afterwards,—after I got my receipt, but I cannot tell whether it was a week or three weeks or less than that. I would say in a short time.

Q. What was done with your note at the time you made that contract? A. The note was cancelled.

Q. What became of it? A. They filed it and transferred the account to an account with me instead of an interest bearing note.

Q. Didn't the account bear interest? A. No sir, that was the object,—that was my object in making the change,—to stop the interest. The timber was to be paid for as it was taken off the land and the account would be credited with the timber as it was cut and delivered.

Q. Wasn't your contract just like the contract of the others with the Martin-Alexander Lumber Company about the
534 timber there? A. I didn't see the others.

Q. You say your contract specified that the account should be without interest? A. That is my understanding; that there should be no interest. That was my object in cancelling the note.

Q. Who told you that? A. I had very little talk with any of them except Mr. Copeland; and that was the way I thought.

Q. The same applied to your wife? A. Yes sir, I would say so.

Mr. Youmans: I introduce the final receipt of Henry M. Lintz:

* * * * * * * * *

Q. You said that your wife also made an entry? A. Yes sir.

Q. The paper I now show you is her application is it not? A. Yes sir, that is her signature.

Mr. Youmans: I introduce the sworn statement of Emma E. Lintz, dated Dec. 12, 1894:

* * * * * * * * *

536 Q. She went back too, didn't she? A. Yes, sir.

Q. At the same time you did? A. Yes, sir.

Q. And made the proof before the land office? A. Yes, sir.

Q. The paper I now show you is her testimony, is it not? A. Yes, sir, that is her signature.

Q. Mr. Copeland was also a witness for her was he not? A. I think he was. As I say I am not positive, but I think he was.

Q. The paper I now show you is her final receipt is it
537 not? A. Yes, sir, that is it.

Mr. Youmans: I will introduce the final receipt of Emma Lintz:

* * * * * * * * *

Mr. Youmans: I will also introduce the testimony of the claimant Emma Lintz and of the witness Jim P. Copeland for Emma Lintz:

* * * * * * * * *

542 Q. All of this was in Pike County, Arkansas, was it not? A. Yes, sir.

Q. What is your judgment as to the value of the land at the time you entered it? A. At the time I entered the land I thought that the 160 acres had 100,000 feet of lumber on it, the market value of which would be,—the average
543 would be about $5: and my wife's would have been 25,000 at the same value in addition to the land besides.

Q. What was the land worth? A. That is a question I can not hardly say. I don't know whether I could have sold it for 50 cents or a dollar an acre. I don't know that I would have taken less than that at any time.

The Court: What is it fit for?

The Witness: It would be very good for grazing land; and we have had a little oil excitement there and it is possible that it might have a value other than for grazing purposes, and it may be that at no distant day it could be turned into agricultural land, but in the condition it is now I would not have taken less, certainly, than a dollar an acre at any time.

Q. You have not sold it then? A. No, sir.

Q. Your note is cancelled and it was held by Mr. Copeland and the note of your wife was also cancelled? A. Yes, sir.

Q. She made a similar contract? A. Yes, sir.

Q. And the timber has been cut from your land? A. Partially, it is not entirely cut.

Cross-Examination

By Judge Read:

Q. What is your age? A. I will be 65 years old this coming spring.

Q. Where had you lived prior to going to Pike? A. I lived in Clark before I went up there.

Q. What business have you been engaged in? A. I have been in the saw mill some and farming some.

Q. How long have you been a farmer? A. It has been a little indefinite because I have been mixing it up for eight or ten years perhaps.

544 Q. What capacities were you working in in Pike when you went there? A. The title they called me was woods boss. I had charge of the cutting and delivering of the timber to their railroad track there.

Q. Where did that take you? A. Right in the woods.

Q. Where the timber was all the time? A. Yes, sir.

Q. What was Mr. Copeland doing there? A. Copeland's duties most of the time were buying timber from anyone he could get any.

Q. He was buying for the mill? A. Yes, sir.

Q. As a matter of fact whether he was buying from all parties from whom he could purchase timber whether the land was owned by them formerly or whether it was all under this Timber and Stone Act. (A pause) He bought all the timber he could get? A. Yes, sir, he bought from anybody and everybody. He bought sometimes in bulk and sometimes by the thousand.

Q. When you wanted to sell your timber or made your contract for the sale of it,—or when anybody wanted to buy or sell timber, a proper person for them to have gone to would have been Mr. Copeland? A. Yes, sir. I should not think about going to anybody else because they would have referred me to him. I guess they would.

Q. He is the party who did all that business? A. Yes, sir.

Q. Your business is keeping the mill supplied with timber? A. Yes, sir.

Q. When this matter was first suggested to you you wanted to consider it carefully? A. Yes, sir, I thought as it
545 was a privilege I had but once I would make the best of it.

Q. Therefore you wanted to be very careful about it? A. Yes, sir.

Q. And you did look into the matter carefully? A. Yes, sir.

Q. You considered all the arguments in favor of it and against it? A. My wife and I discussed it very carefully at home; that there was probably about $150. for us clear of the land and we would hold the land indefinitely and we would probably have $150. and that was as much as we would be able to get out of that privilege.

Q. Before you entered your land you made a careful investigation of the land and you wanted to see where the best piece was so you could pick it out? A. Yes, sir.

Q. And when you had made up your mind you went to Mr. Copeland and told him? A. Yes, sir, I am a surveyor myself and I talked with Mr. Copeland and asked him to go up and show me where the land was. He had done considerable surveying and I knew he could tell me and that was my object in asking Mr. Copeland to go with me,—to make it easier for me.

Q. You went out then, and looked at the land and Selected your piece and told him if you could borrow the money that you would make the entry? A. Yes, sir.

Q. Did you do that because you thought it was a good investment to make? A. Yes, sir, because I thought it was about the best that I could do with the privilege that I had.

546 Q. From your knowledge of that land down there your idea was that the land at $2.50 an acre was a good investment? A. Yes sir.

Q. And you and your wife had no hesitancy in going into it? A. No sir. When I spoke about a good investment,—I have seen timber that would have been a far better investment but they would not come double in that way.

Q. You regarded that as a good investment? A. Yes sir, it was the best I could do at that time or probably would have a chance to do.

Q. You were willing to expend your chance and privilege right there? A. Yes sir.

Q. And therefore borrowed the money and bought the land? A. Yes sir.

Q. And you got your final receipt and kept it. A. Yes sir.

Q. And you have the patent yet. A. Yes sir.

Q. Afterwards you made a timber contract for the timber at 50 cents a thousand? A. Yes sir.

Q. Is that the ruling price down there? A. Yes sir, where it has been bought by the thousand. I believe that is the uniform price.

[A.] And you were willing to sell at that price? A. Yes sir.

Q. Had you made any contract or agreement to sell the timber prior to the time you gave that timber contract? A. No sir.

Q. Had there been any discussion about a contract by which you were to sell it prior to the time? A. I think not.

547 Q. At the time you got your final receipt after you obtained your final receipt and made that timber contract, were you under any obligations to sell to anyone before you made that timber contract? A. No sir, I had not made

myself so by any expression of mine. I had not gone into [and] contract or any arrangement.

Q. You were at liberty to sell to whomsoever you pleased? A. Yes sir.

Q. If you got an order from anybody else that you regarded as better you would have sold it to them? A. If I got an order that was better,—I believe I would have notified them. I believe I would have gone to them. They certainly would have had to pay me as much as the better price.

Q. If you hadn't sold to them you would have sold to the other parties? A. Yes sir, I would have felt that they had no reason to complain of me.

Re-Examination

By Mr. Youmans:

Q. You were a surveyor? A. Yes sir, I am a surveyor. I was not doing work for them as a surveyor.

Q. You were a surveyor notwithstanding? A. Yes sir.

And further the witness saith not.

548 E. A. Schicker, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Q. You are the Receiver of the Camden Land Office? A. Yes sir.

Q. I show you here what purports to be the application of John H. Scott: state whether or not that application was made before you? A. Yes sir.

Q. The proof of John H. Scott was made before you? A. Yes sir, I swore him to it.

Mr. Youmans: I suggest that we could save time if Mr. Schicker will take these papers I now show him and go into the Clerk's office and examine them and see whether they are sworn to before him; and they can be introduced without taking the time to go through each one of them separately.

Witness took papers and left the stand.

549 Seborn Z. Moran, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Q. What is your name? A. Seborn Z. Moran.

Q. Where do you live? A. Pike County, six miles east of Kirby. A little north of east.

Q. Where did you live during the year 1900? A. I lived at Pike City the greater portion of that year.

Q. What were you doing? A. I was working for the Martin-Alexander Lumber Company.

Q. How long did you work for them? A. I will have to study a little to tell you. I commenced working for them in December, 1899, if my memory serves me right, and I worked then up until the 11th of July, 1900. Then I stopped off work, and I came back there and went to work again, I believe in November, 1900, and worked then until the 16th of January, 1900. I think that was about the time. I commenced working for them sometime in November and worked until the following January.

Q. 1901? A. Yes sir.

Q. What did you do? A. I was handling lumber. The first three months I helped to stack lumber on the dry kiln, and next time I loaded lumber in wagons, at what was known as the green chute.

Q. During the time you were there did you make an entry of public lands? A. Yes sir.

Q. What brought that matter to your attention? A. By a conversation with Mr. Copeland.

550 Q. How did that come up? A. He came to see me. He came to where I was working and asked me if I wanted to take up some land, and the first time he came I told him that I didn't know that I cared to take up any, and the third time, if my memory serves me right,—

Q. He came the second time did he? A. Yes sir. If my memory serves me right, the third time we had a conversation with regard to it, very short, and I don't remember every word that was passed, but I remember very well that he said, the law give me the right to go and take up 160 acres under what was known as the Stone and Timber Act. He said the law give me the right. He said it was perfectly honorable and right; and also said it give my wife the right, and wanted to know if she would go and take 160 acres. At that time I had never talked to her and I couldn't tell him whether she would or not. He asked me to see her at noon and let him know in the afternoon whether she could go. We had a conversation and she said if I went she would go too. He also said that it would not cost us anything to take it up; that it would be paid for.

Q. You went to Camden, did you? A. Yes sir.

Q. You went out on your land first? A. Yes sir. The afternoon of the same day, I saw my wife,—in the afternoon he came by where I was working and said to meet at the commissary the following morning, if my memory serves me right. I was at the commissary the following morning,—he said he would make arrangements to carry us out to the mountains,—to the woods, to look at the land.

Q. Did he say who else besides your wife? A. I don't know that he did, at that time.

Q. What was the next you did? A. I believe that was about all that was said at that conversation. I don't remember, I believe, of anything else that was said then at that conversation.

551

Q. You met, then, the next morning at the commissary? A. Yes sir, the next morning I and my wife went up to the commissary about 8-O'clock.

Q. Was there anybody else there? A. Yes, sir, Mr. Dorsey.

Q. Was there anybody else there? A. Yes sir, in a short time, Mr. Charles W. Davis and his wife came there.

Q. What else? A. Sometime about 8-O'clock there was a two horse wagon geared up at the livery stable and drove up around the commissary, and we all got in and went out to the woods.

Q. Was Mr. Copeland there? A. Yes sir, he went in the same wagon we did.

Q. You went out on the land, did you? A. Yes sir.

Q. Did you have any conversation with Mr. Copeland in regard to the matter of the entering of those lands? A. I don't know that there was any particular conversation, going out there that morning. Nothing more than just a general talk. I don't know as there was any particular conversation.

Q. State any conversation that you had there on the land. A. Nothing more than he showed us where the land lay that we could take up under this act.

Q. Did he show you any particular tract? A. He just showed us the body of the land?

Q. Who gave you the numbers? A. The first that I saw of the numbers, Charles W. Davis had the numbers. There was something said in regard to the numbers that day. I don't remember just what was said in regard to the numbers, there was something said, though; I believe Mr. Copeland said he would give the numbers of the land. There was something of that kind said. I did not charge my memory very well with it.

552

Q. Did you go to Camden? A. Yes sir.

Q. Did you go the next day? A. No sir. If my memory serves me right, that was on Friday, and the following Monday we went to Camden. We taken a train and went as far as Gurdon on Monday.

Q. Who paid the expenses of the trip down to Camden? A. Charles W. Davis.

Q. Do you know where he got the money? A. I don't know that I can answer that question direct.

Q. Did Mr. Copeland say that he would give him the money? A. Just before I got to the platform at Pike City, I met Brother

Copeland and I said, "Hello, Brother Copeland," and he remarked to me, "Brother Davis has everything for your welfare and comfort on the train."

Q. Then you made your entries at the land office? A. Yes sir.

Q. Did Mr. Davis give you the land that you were to enter? A. He had the entire tract on one piece of paper.

Q. You made application to enter that, did you? (showing witness paper) A. Yes sir.

Q. That, (referring to paper) is your application? A. Yes sir.

Q. That, (referring to another paper) is your wife's application? A. Yes sir, that is hers.

Mr. Youmans: I will introduce the application of Moran and his wife. The application of Moran is dated the 10th day of April, 1900, and the application of Mrs. Moran is dated the same date.

* * * * * * * * *

556 Q. Mr. Dorsey made an entry at the same time did he? A. Yes sir.

Q. Did you see him make his entry? A. Yes sir, I was there present at the same time.

Q. Is the paper I now show you the application of Bill Dorsey? A. Yes sir, I think it is.

Mr. Youmans: I will introduce that application also. It is dated the 10th of April, 1900:

* * * * * * * * *

557 Q. You got the notice for publication, did you? A. Yes sir.

Q. Did your wife get one? A. Yes sir.

Q. What did you do with them? A. We turned them over to Mr. Copeland, when we returned to Pike City.

558 Q. Why did you do that? A. Because he called for them.

Q. They were published, were they? A. Yes sir.

Q. At the expiration of the time, what did you do? A. We went to Camden again.

Q. And made your final proof? A. Yes sir.

Q. Who had the money? A. I never saw any money at all.

Q. Just relate what occurred so far as you know. A. When we got to Camden?

[A.] Yes sir.

[Q.] Or when we started to Camden?

[A.] No, when you got to Camden.

[Q.] We got to Camden somewhere about 11 o'clock on the 5th day of July. I don't know exactly what time. We went to what is known as the Bennett House for dinner. We got our dinner. Us five was in company there at the Bennett House, myself, Mr. Dorsey, my wife, and Mr. Davis and his wife. And Mr. Davis remarked after dinner, "I will go down to the Ouachita Hotel and see if Mr. Alexander come in," and he went off and was gone several minutes and come back and [the] remarked that everything was all right, "let us go to the land office", and says that all we have to do is to go and make our proof; that the land is paid for. He just gave over the money for our proof, and we went over to the land office and made our proof.

Q. The paper I now show you is the proof made by your wife was it? A. I suppose it was.

Mr. Youmans: I will introduce that. It is dated July 5th, 1900.

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561 Q. The paper I now show you is your proof, is it not? A. Yes sir, I wrote that.

Mr. Youmans: I will introduce this proof:

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564 Q. Is the paper I now show you Bill Dorsey's proof? A. Yes sir, I think so.

Mr. Youmans: I will introduce the proof of Bill Dorsey, also:

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567 Q. You got your final receipts, each one of you? A. Yes sir.

Q. Are the papers I now show you the final receipts of yourself, your wife and Bill Dorsey? A. Yes sir.

568 Mr. Youmans: I will introduce these final receipts:

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569 Q. Now, what was done: what did you do with those receipts? A. I brought them home with me and I kept them until I sold this tract of land to one D. D. Brunson.

Q. Who paid your expenses on that trip? A. Mr. Davis paid it in part. I will have to commence when we left Pike City.

Q. Go ahead. A. We got on the train at Pike City, on the 4th morning of July, to go to Camden, and the conductor got to me first one in the crowd, and about the time he walked up to me Mr. Alexander spoke,—he was on the train,—and says, "I will get tickets for these five parties, when I get to Smith-

ton." He says, "I did not have time to get them before the train left." That was all that was said about it. The conductor passed us. I paid no money. When we left Smithton Mr. Davis paid for us from there on.

Q. He paid your hotel bill also? A. Yes sir, Mr. Davis paid that.

Q. You got round trip [tickest], did you? A. Yes sir, from Gurdon on to Camden.

Q. Was there anything said by Mr. Alexander or Mr. Copeland about signing any note about the purchase money for that land? A. There was not, until after we proved up.

Q. While you were at Camden? A. No sir, not at Camden.

Q. When was the first that was said about it? A. If you let me state it I think I can tell it from start to finish. When we got back, Mr. Davis, as I said, paid our expenses to Pike City. We got back on the 6th evening of July,—we got back home to Pike City. On the 7th of July, about 10 o'clock in the morning, Mr. Davis came where I was home. I was not feeling very well and didn't go to work that day. Mr. Davis came where I was and said that Mr. Alexander told him to come and tell me and Mr. Dorsey to come down to the
570 office and bring our receipts; he wanted to compare them and see if we had the numbers of the land right.

Objected to. Objection sustained.

Q. Don't say what anybody else told you except Mr. Copeland, or Mr. Alexander or Mr. Martin. A. I never had a conversation with Mr. Martin in my life about anything.

Q. What did you do then? A. I went in the afternoon, to Mr. Alexander's office.

Q. Tell what passed there? A. When I went in to the office, Mr. Martin and Mr. Alexander were both in the office, and Mr. Martin got up and walked into another room and closed the door, and Mr. Alexander asked me where was my receipt. I told him it was home; that I had put it away at home, and left it,—and then I would have to use Mr. Davis' name,—

Q. If it was in Mr. Alexander's presence, go ahead. A. Mr. Davis spoke up about that time and told Mr. Alexander to read the paper and he [wnated] us to sign. Mr. Alexander just pulled a little drawer in the desk open, and drawed out some papers and commenced to read the thing and read it over. This note was pinned to another paper which he said was a contract. When he read the note over,—

Q. Whose was it? A. He said it was Mr. Wait's. He remarked that he would read this one as it was all ready filled out, and then we could know exactly what the papers were. So he read it over; and I just remarked,—I remarked I couldn't

sign those papers, and I got up and walked out of the office, and the other two parties followed me, Mr. Davis and Mr. Dorsey. We walked down back of Dr. King's office, and we had a little talk, us three together, and Mr. Davis turned and left us down there,—I and Mr. Dorsey. Directly Mr. Copeland, Mr. Alexander and Mr. Davis came back to where we were talking and commenced to talk to us about signing those
570 papers.

Judge Read: Who came with you?
The Witness: Mr. Alexander and Mr. Copeland.
Judge Read: And who else?
The Witness: Mr. Davis.

Q. Mr. Alexander was along there? A. Yes sir, Mr. Alexander, or Mr. Copeland,—I don't recollect who it was that raised the conversation, but we commenced to talk in regards to the land and about signing the papers. I told them that I couldn't sign them unless I was paid something for the land. I told them that I had taken an oath at Camden that I had taken up this land for my own special benefit and that I wanted to save my oath and I didn't see how I could do it by signing this contract, which held good for ninety-nine years, and not be paid something for it; and I refused to sign; and I remember very well that Mr. Alexander said, "out of forty-three you are the first that ever refused to sign the contract as soon as they got the receipt." He says furthermore, "the balance of them signed them before they proved up their lands up."

Q. Signed the notes, you mean? A. Yes sir, signed the notes, and the contracts afterwards. I believe that that was about all that was said at that time.

Q. Did Mr. Copeland say anything, or did you ask Mr. Copeland anything? A. Yes, sir; I asked Mr. Copeland. I cannot think just how it came up exactly, but I asked Mr. Copeland if he didn't take up some of this land, and he said he did, and I asked him if he signed it away without being paid anything for this land. He said he did; and then I asked him if he didn't take the same oath down there that we did, and I asked him how he felt to sign it away without being paid for it.

Q. Did he make any reply? A. No, sir, he made no reply.

Q. You say, "sign it away": do you mean signing
572 they

that paper that was produced? A. Signing these papers that they produced.

Q. Was that all that occurred there on that occasion? A. I believe that was all that occurred there. We separated from there then.

Q. Did Mr. Alexander say anything further to you? A. Yes sir, we had two or three conversations later on than that.

Q. What were they? A. If my memory serves me right, it was on the 10th day of July. There was nothing more said, I don't think,—yes, there was another,—a very few words passed on the 9th day. On the 9th morning of July, Mr. Copeland and Mr. Davis came to where I was working, and Mr. Copeland told me that Mr. Alexander sent him down there to get me to sign those papers.

Judge Read: Mr. Davis came to you too?

The Witness: Mr. Copeland and Mr. Davis together; and I told him I wouldn't sign them unless they would pay me something for the land, and they passed on down, going to where Mr. Dorsey was; and in a short time they came back and Mr. Davis asked me if I would sign them, and I said I would not.

Objected to.

The Witness (continuing) Then on the evening of the 10th of July, I was at work and Mr. Alexander came up within thirty or forty steps of where I was at work,—I reckon some twenty or thirty minutes, I don't know how long before the whistle blowed to quit at night, in the evening, and he stood down in the shade of the water tank and he stood there until the whistle blowed for the hands to stop work. When the whistle blowed I started home. As I was going he called to me that he wanted to see me, and I walked back to
573 where he was and we had some talk in regards to it, to signing those papers. He insisted that I sign them, and I refused to sign them. The next morning he came where I was at work again, which was on the 11th morning of July, soon after I commenced to work. He rode up to within about twenty or thirty steps and halted his horse and come where I was at work and remarked, he says, "I will send a hand down here to take your place this morning, long enough for you to go home and get your wife and go into the office and sign those papers." I remarked to him, "Mr. Alexander, I won't sign them unless you come to my proposition," and he just remarked that I had got to settle this morning some way. I told him, "Mr. Alexander, if you settle it right we can settle it in a very few minutes, if you come to what I think is right." He says, It has got to be settled this forenoon one way or the other, and he stepped out and got on his horse, and commenced to ride rapidly towards town. I left my work, and went home. About 10 o'clock I went out by where Mr. Dorsey was and he went out, and about 10 o'clock Mr. Steve Woodard came to my house and told me that Mr. Alexander,—

Objected to.

Q. Go ahead, and tell what you did. A. I went home, as I said, and about 11 o'clock Mr. Alexander came to my house with Mr. Stanley, Mr. Jest us and Mr. Charles W. Davis, and there he had a talk with Mr. Dorsey, and asked him to sign those papers. He also talked to my wife in regards to it, to sign them. He asked all of us if we wanted to beat him out of his money. I told him that I didn't get any money from him. I hadn't asked him for money. I didn't want to beat anybody out of any money. I told him that I supposed that he paid for this land; that he was getting his money when the timber was cut, as it was collected, or something of that kind. He said he didn't calculate to get it that way. I believe that is about all that I said to him at that time.

574 Q. Did you have any further conversation with either one of them? A. No sir, I never had [and] more conversations. I don't believe, after that, with any of them. I don't remember it.

Q. Did you have any conversation with Mr. Alexander in which you stated you had made it for your own benefit? A. Yes sir.

Q. Where was that and when was that? A. That conversation was several different times. I think it was mentioned; it was several different places. It was talked there at my house, at that day.

Q. Did he make any reply to that? A. Yes sir, there was a reply made to it.

Q. What was that? A. I don't believe though, that this reply was there at this time, if my memory serves me right. At one time he made a reply was when he was at the back of Dr. King's office.

Q. The second conversation you had? A. Yes sir.

Q. What was that? A. I said I told them that I had taken it up for my own special benefit; and he remarked that he was benefitted by the company giving the land; that was giving the poor man work: that would give them timber to operate, or that would give us work, that we would get the benefit of it that way.

Q. Did you have any more conversation with Mr. Alexander? A. I don't believe that we had any more conversation, —I and him about it.

Q. Was there anything said about your patent,—getting your patent stopped? A. Yes sir.

Q. What was that? A. He remarked at one time,
575 —I don't remember at which conversation,—that he had sent Mr. Copeland to Camden. This was at my house, I remember now, that it was at my house, about the last conversation we had. He tried to get us, when we wouldn't sign up those notes and contracts, he then wanted us to give up

the receipts, and we refused to give them up and he went on and said that we had just as well give them up for he had sent Mr. Copeland to Camden, and he would get the money back they paid for this land, and we would n't get any patent, and that we would just as well give up the receipts. I asked him what he wanted the receipts for if he could get his money without them, and he said he had already sent Mr. Copeland after them.

Q. Did you see the note he wanted you to sign? A. Yes sir. I never read it. I never had the note in my hand. I suppose I could have had it in my hand. I suppose I could give you the reading in a few words, or the substance of it. It [wnet] on to say that it was for the purchase money of a certain piece of land after that time; and then the land was described in this note, was the way they read the note.

Q. When would the note fall due? A. I don't know as I paid any attention as to when it was due.

Q. Were you paid for your time when you went down to Camden, in these two trips? A. I was, on the first trip.

Q. You were not on the second? A. No sir.

The Court: Did you sell your patent?

The Witness: Yes sir. I sold this tract of land to Mr. D. D. Brunson, and gave him the receipt, and made him a quit claim deed.

Q. Do you know whether he got the patent? A. No
576 sir. I never did ask him.

Q. Who is Brunson? A. There he sits, right over there (pointing to a gentleman in the audience).

Q. Who is he? What was he at that time: who did he represent? A. At the time he bought the land, he did not claim to represent anybody but himself.

Q. You sold it to him ind-vidually? A. Yes sir.

577 Cross-Examination,

By Judge Read:

Q. Were you working there by the month or by the day? A. I was working by the day, I suppose.

Q. Who turned in your time? A. At that time, a man by the name of Pye, Alvin Pye.

Q. He was the man that kept your time and turned it in to the company? A. Yes sir.

Q. Do you know that Pye turned in your time when you went on that first trip? A. He did not turn it in that trip, he didn't. Mr. Pye didn't, for that trip.

Q. Who turned your time in? A. I don't know who turned it in; but Mr. Staley, he paid off at that time, and he paid me on the 15th, and a few days after the 15th came around

that I drawed my money, Mr. Staley told me that he had that extra time for me while I was there on that trip to Camden.

Q. Where is Mr. Staley now? A. I don't remember where he is.

Q. You got the money for the extra trip from Mr. Staley, did you? A. Yes sir.

Q. How were you working, by the month or by the day? A. I was getting $1.50 a day at that time.

Q. What was Mr. Staley's position there at that time? A. He was in the office there, at the company's store.

Q. In the office, or at the company's store? A. I reckon it would be termed an office. They issued checks at that time, and let the hands have those checks and booked their time as the time books would come in from the mill.

Q. Where did Mr. Staley get your time, who from? A. I don't know, sir, who kept the time for those three days.

578 Q. When was it Mr. Staley came to you and gave you those three days time? A. It was just after I received my pay, on the 15th.

Q. Of what month? A. It was in August, when we received our note. We always got our pay the 15th of this month for our last month's work.

Q. What month was it you got this pay for? A. It was in April. I got the pay in May.

[A.] In May, for your April services? A. Yes sir.

Q. What time in May was it that you got it? A. It was a few days after the 15th of the month. I don't know,—sometime.

Q. Did you get it at the store? A. Yes sir. Right in there at the office. Where they paid off. When pay day came around, they would pay them the money there.

Q. With your check on the time book; were you paid by that? A. No sir.

Q. The time book was kept there, was it not? A. The time-book, if I understand it, was turned in there in the night, and the time was drawn off on another book.

Q. The amount that you were paid was the amount that was on that book for that month's services? A. What was due me. I suppose they got it there.

Q. How much was paid you on that occasion? A. I could not tell you [gow] much was paid me at that time. I did not charge my memory with it.

Q. Did you ask about the three days that you were gone? A. I don't remember.

Q. Did you expect to get the three days that you were gone? A. Yes sir.

Q. Why didn't you ask about it when you got your
579 pay the first time? A. I might have done it.

Q. Why didn't you go to Dad Pye about it? A. Dad Pye told me he had nothing to do with it.

Q. Did you go to him about it? A. Yes sir. I asked him about it, and he said he had nothing to do with those three days.

Q. He refused to turn it in? A. Yes sir. He said he had nothing to do with it.

Q. How did you get your money for that? A. Mr. Staley?

Q. Did you go to Mr. Staley? A. I don't remember whether I mentioned it to Mr. Staley, or he to me, or not.

Q. How did he pay it to you, in what? A. He paid me the money.

Q. He did not give you a check for it? A. No sir. He did not.

Q. Do you know by whose order he did it? A. No sir.

Q. How much money was it he handed to you? A. He paid me for three days time at $1.50 a day.

Q. How long was that after you had drawn your other money? A. Some two or three days.

Q. And, so far as you remember, he voluntarily called you in and handed it to you? A. Yes, sir.

Q. You had not said anything to him about it? A. If I had, I don't remember.

Q. You had not made any kick about it, except you spoke to Mr. Pye? A. I spoke to Mr. Pye.

580 Q. Don't you know that Mr. Staley did not have any authority to pay anything at all except what was turned in to him by the proper person, or what was on that book? A. I don't know what his authority was, so far as that was concerned.

Q. Did you ever get anything any other way? A. No sir.

Q. Except your time was on this book, except this one time? A. No sir.

Q. You always had your time on the book before you got it? A. Yes sir.

Q. Dad Pye was the man who always turned it in? A. Yes sir.

Q. This conversation that you spoke of having with Mr. Copeland, the first one, when he asked you if you could take up this land, where were you at that time? A. I was working down at the mill.

Q. What reply did you make to that? A. Do you mean the first time?

Q. Yes. A. I told him that I did not know that I cared to go.

Q. What was it he asked you? A. He asked me if I wanted to go and take up some land.

Q. Did that end the conversation? A. Yes sir. It did, in regards to the land.

Q. When was the next conversation? A. It was a short while after that.

Q. Where? A. At the same place.

Q. What was it you said then? A. About the same
581 conversation we did the first time. He asked me if I wanted to go.

Q. He just came up to you and spoke to you, and asked you if you wanted to go and take up some land? A. Yes sir.

Q. He did not refer to his first conversation? A. No sir.

Q. What did you tell him then? A. That I did not care to go.

Q. How long was that after the first conversation? A. I don't remember. It was not a great while.

Q. When was the third conversation? A. A few days later on.

Q. Where? A. At the same place. Where I was working.

Q. What was it he said to you then? A. He asked me again if I did not want to go and take up some land?

Q. He never referred to the other conversations at all? A. No sir.

Q. He just came up and reiterated the same thing? A. Yes sir.

Q. What did he say then? A. We had a little more talk in regards to it then than we had before. He said that the law gave me a right. He said that it was honorable and upright.

Q. What did he say was honorable and upright? A. The way to take this land up, as he proposed.

Q. How did he propose it could be taken up? A. He just proposed we go and take it up under the Stone and Timber Act.

Q. Did you understand how you could take it up under the Stone and Timber Act? A. No sir. I did not know anything about the act. I did not know there was any such act until then.

582 Q. That was the first time there was anything said about the Stone and Timber Act? A. Yes sir.

Q. Had there been any other land taken up at that time? A. I had heard of it being taken up.

Q. Did you know how much you had to pay an acre for that land? A. No sir.

Q. Did you ask? A. No sir.

Q. Did you ask any one, at any time, how much you would have to pay? A. I don't remember that I did.

Q. And [yiu] did not know, then, how much you had to pay? A. No sir.

Q. Or what you had to pay? A. No sir. I did not.

Q. And he told you that you and your wife could go up there and take up the land; and it was honorable and right for you to do so, and you agreed to do it? A. Yes sir.

Q. And you did not know how, or what the price was, or what the process was, or what you would have to pay, or anything? A. No sir. He told me it would be paid out; it would not cost me anything.

Q. You expected that whatever was paid out there, would be given to [yiu] as a gratuity? A. No sir. I did not think it that way.

Q. You thought it would be made a present to you? A. No sir.

Q. What did you think about it? A. I can tell you just what I thought. He never said it was for this company at all,
and I just thought that this company was going to pay
583 it out, and they would pay me something for the right
the Government gave me; the Government gave me a right to take it up, if it was honorable and right. I did not expect them to want me to give it to them. That is what I thought about it. I never asked any questions about what it would cost.

Q. Didn't he tell you in that conversation that it would cost you two dollars and a half an acre? A. No sir.

Q. And that you would have to go to Camden for the purpose of making the entry? A. He said we would have to go to Camden.

Q. And that the company would lend you this money to make the entry? A. No sir. He did not say that the company would lend me the money.

Q. Was there anybody else present at that time? Except you and him? A. No sir. There was not.

Q. When you went down to Camden the first time—you say when he took you out there he showed you no particular tract: who went with you to Camden? A. My wife, Mr. Davis and his wife, and Mr. Dorsey.

Q. Where were you when you made the final proof of this land? A. I was at Camden. At the Land Office.

Q. Who was present there? A. There was two gentlemen there. I don't know who they were, except the crowd that went with me.

Q. You say that Mr. Copeland took you out there, and did not show you any particular tract at all? A. He showed us the land in general. He said "Right in here lies the land you all are to take up".

Q. You were all standing still? A. No sir. We were travelling in and about our wagon, in the woods.

584 Q. Where did he point to? A. He pointed out, all around.

Q. You don't know whether you was on the land, or not? A. He says, "we are on the land". That is all I know about it.

Q. You did examine the land? A. Yes sir.

Q. Did he point out which you were to enter? A. No sir.

Q. Did he [pint] out which the others were to enter? A. No sir.

Q. Then, you don't know whether you was on the land that was to be entered, or not? A. No sir.

Q. You say he did not point out any that you were to enter? A. No sir. He did not point out which.

Q. You don't know whether you were on it or not? A. No sir. I don't know, really, that I was.

Q. You don't know whether you have ever been on the land that is in your application, or not? A. No sir. I don't know; [onlyn] he said we was on the land. I don't know where the land is. I probably might not have been, on it. Mr. Copeland said I was. That was all I know about it.

Q. You were willing to [tale] his word for it? A. Yes sir. I looked at him as being a man who would tell me what was right.

Q. I want you to state whether you were on the quarter-section of land that was pointed out to you as being land that you would enter. A. I could not say that I was.

Q. You swore that you had been on it, didn't you? A. Yes sir.

Q. Copeland was not there with you at that time?

585 A. No sir.

Q. You swore before the Register, or this party that took your affidavit, that you had been on that very land, and examined it? A. Yes, sir, I guess I did. I just taken Mr. Copeland's word for it that he carried me on the land.

Q. I will read you the following questions and answers which you gave before the Register: "Q. 4—Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions? A.—I am. Q. 5—When and in what manner was such inspection made? Answer—About 1st, April, 1900, by riding and walking over the land." Did you go out and walk over the land? A. We walked over some while we were out in the woods.

Q. You don't know what land you walked over? A. No, sir, I don't know where the land was.

Q. Why didn't you tell the truth in what you swore to? A. Mr. Copeland told me that I was on the land.

Q. You believed you were upon the land and that you made an inspection of it? A. Yes, sir, I believed what Mr. Copeland told me.

Q. You believed you were on that land, and made such an inspection as the law requires? A. I might not have made such an inspection as the law requires.

Q. You believed that you made the inspection that you swore to? A. Yes, sir.

Q. When you said to the District Attorney that he simply took you up there and showed you a large body of land, what did you mean? A. We rode and walked over it.

586 Q. You never have said that you walked over it; if you made that expression, you did no intend to make it, did you; you intended to say that you did walk and ride over that land? A. I believed that I was on the land.

Q. And walked and rode over it, didn't you? A. Yes, sir.

Q. And you examined it too, didn't you; you looked at the trees on the land, didn't you? A. Yes, sir, I was looking all the time.

Q. And you saw what was there, didn't you? A. Yes, sir.

Q. I will now read you some more from the statement you made to the Register. "Ques. 6—Is the land occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by or do not belong to you? Ans. No to each. Ques.—7—Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed? Ans. No, to each." A. There was none of it fit for cultivation that I saw.

Q. You were on this land that you applied for? A. I suppose I was.

Q. You believed that you were? A. Yes, sir, I believed that Brother Copeland told me the truth about it.

Q. I will read you some more from your sworn statement. "Ques.—8—What is the situation of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation? Ans.—Too broken and hilly. Ques.-9.—Are there any salines or indications of deposits of gold, silver, cinnabar, copper or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable. Ans.—No to each. Ques.-10.—Is the land more valuable for mineral or any other purposes [that] for the timber or stone thereon, or is it chiefly valuable for timber or stone?

587 Ans.—Chiefly for the timber." You examined it enough to swear that didn't you; you knew there were no mines upon it; you knew there were no minerals or springs upon it? A. There was none that I could see.

Q. And you went up there for the purpose of making that affidavit when you went down there to Camden? A. Yes, sir.

Q. And you went up there to locate that land? A. Yes, sir.

Q. I will read you some more from your statement. "Ques. 11—From what facts do you conclude that the land is chiefly valuable for timber or stone? Ans.—Timber is growing thereon. Ques. 12—What is the estimated market value of the timber standing upon this land? Ans.—About $3.00 per acre." Is that true? A. Yes, sir.

[—] I will read you some more from your statement. Ques. 13—Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?" What was your answer to that? A. I answered that I had not.

Q. Was it true? A. It was true, sir.

Q. Literally and absolutely true? A. Yes, sir.

Q. There was no reservation of any kind in connection with it? A. No, sir.

Q. You had not made any contract? A. No, sir.

Q. No one else was interested in it except yourself? A. No, sir.

588 Q. "Did you make this entry in good faith for the appropriation of the land exclusively to yourself, and not for the use and benefit of any other person"? How did you answer that? A. I answered it, that I made it for my own use.

Q. Was that true? A. Yes, sir, I expected to be benefitted.

Q. Was this question asked you: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?" A. Yes, sir, I made it for my own use.

Q. You didn't make it for the use or benefit of any other person? A. No, sir.

Q. Was this question asked you: "Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?" How did you answer that? A. That they had not?

Q. Now, that was true, was it not? A. Yes, sir.

Q. That no other person than yourself or any firm or corporation or association had any interest in that entry, that you were making at that time, and the timber thereon: that is absolutely true, is it not? A. Yes, sir, they had no interest?

Q. There was no agreement, or contract or promise, expressed or implied, that gave anybody an interest in that land, except yourself, was there? A. No, sir, there was no contract?

Q. When you entered that land, and got your final receipt, you believed that you were, so far as that were concerned, the absolute owner of it, and no one else had any interest or right in it? A. Yes, sir, I supposed it was

589 mine.

Q. That was your view of the thing, at that time? A. Yes sir.

Q. That was your view of the thing afterwards? A. Yes sir.

Q. That it was your land. A. Yes sir.

Q. That nobody else had any claim on that land? A. No sir, nobody had any claim on it.

Q. Or interest in it? A. No sir.

Q. Or in the timber on the land? A. No sir.

Q. Those answers are true? A. Yes sir.

Q. You have no mental reservations that would indicate that those things are not true? A. No sir.

Q. They are absolutely true? A. Yes sir.

Q. Your wife made a similar affidavit, didn't she? A. Yes sir.

Q. Is she here? A. Yes sir, she is here.

Court adjourned.

590 Saturday, November 15" 1902.
9 o'clock A. M.

Seborn Z. Moran. Recalled for further cross-examination,

Questions by Judge Read:

Q. Mr. Moran how much land did you take up? A. 160 acres.

Q. How much did you testify before the Land Office that the timber on that land was worth? A. I think it was about $2.50 or $3.00 per acre.

Q. The first time you went up there, you had to make a sworn statement did you; when you went down to make the application? A. Yes sir.

Q. You made a sworn statement? A. Yes sir.

Q. I will read it to you and see if this is it (reading)

Land Office at Camden, Ark.
April 10th 1900.

I, Seborn Z. Moran, of (town or city) Pike City, county of Pike, State (or Territory) of Arkansas, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California,

Oregon, Nevada, and in Washington Territory," as extended to all the Public Land States by act of August 4, 1892, for the purchase of the East 2 North West 4 South West 4 North West 4 Sec. 25 and South East 4 North East 4 of Section—26—Township 6-s of Range 25-W, in the district of lands subject to sale at Camden, Arkansas, do solemnly swear that I am a native citizen of the United States, of the age of forty-two years, and by occupation Farmer; that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is unhabited; that it contains no mining or other im-
591 provements nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my post-office address is Pike City, Pike Co. Ark.

SEBORN Z. MORAN."

that was made on the 10th day of April 1900; is that true? A. Yes sir.

Q. At the time you made that affidavit the facts stated in there were true? A. Yes sir.

Q. You read this affidavit or had it read over to you? A. Yes sir; a gentleman read it over.

Q. You understood it? A. Yes sir.

Q. That was in April—the 10th of April? A. Yes sir.

Q. At that time you got a Notice for Publication? A. Yes sir.

Q. What did you say that you did with that Notice? A. I gave it to Mr. Copeland.

Q. You give it to him to have published? A. Yes sir.

Q. In the paper there? A. Yes sir.

Q. At Pike City? A. Yes sir.

Q. Then after that you went down again on the 4th
592 or 5th of July—what day was it you went down? A. We were at Camden on the 5th.

Q. The 5th of July—there is—April, May, June. Three months that you had to think over this matter; and you went down there, on the 5th answered these other questions that were asked you by the Receiver at that time? A. Yes sir.

Q. Mr. Copeland was not with you on that trip? A. On the 5th.

Q. Yes sir. A. No sir.

Q. There was no conversation between you and Mr. Copeland between the time you went—at the time you entered, or the time you went down to make your Final Publication, was there? A. There was none with the exception that I remarked about the 2nd or 3rd of July—I do not remember which date—Mr. Copeland came up where I was. The first remark; he says, "I suppose you are thinking some of going to Camden on the 4th" I said I thought something about it.

Q. You had seen the date in the paper had you? A. Yes sir.

Q. You knew it was about the time for you to go down there? A. Yes sir.

Q. That was all the conversation you had with Mr. Copeland up to that time? A. Yes sir.

Q. There had been no other talk between you and he from the time you made your application in which you made this affidavit, up to the time you got ready to go down to Camden and complete the affidavit? A. No sir, there had been

593 none.

Q. In estimating the market value of the timber standing upon the land at about $3.00 per acre? A. Yes sir.

Q. That was your opinion at that time from a personal inspection of the land? A. Yes sir.

Q. And you so stated there? A. Yes sir.

Q. In connection with the other questions that were asked you? A. Yes sir.

Q. When you got down there, did you ask Mr. Davis or did you ask any one else, where the money was to come from to make that entry? A. I did not.

Q. Did you know that you were going to get any money to make that entry? A. I did not know that. I supposed it would be paid out in some way. I did not make any arrangements for any money individually myself.

Q. You went down without knowing whether you would get the money or not? A. I do not recollect how it was done.

Q. You never did know where the money came [—] did you? A. No sir; I cannot say that I did, now know where it came from. I did not see it.

Q. You know the money was paid didn't you? A. I know it was paid by Mr. Davis saying so. That is all I know of it.

Q. Did you not get a receipt from Mr. Schicker? A. Yes sir.

594 Q. Let me read that receipt to you.

No. 19646. Receiver's Office at Camden, Ark. July 5th, 1900.

Received from Seborn Z. Moran of Pike County Arkansas, the sum of Four Hundred Dollars and .... cents; being in full

for the East 2 North West 2 South West 2 North West 2 Sec. 25 and South East 4 North East 4 quarter of section No. 26 in Township No. 6 — S of Range No. 25 — W, containing 160 acres and .... hundreths, at $2.50 per acre.

$400.00 E. A. SCHICKER, Receiver.

$1.50 testimony fee received. Number of written words 1000. Rate per 100 words, 15 cents.

$10.00 fee received under Act June 3 1878.

(on margin as follows) Timber and Stone Acts June 3, 1878 & Aug. 4, 1892."

You got that receipt didn't you? A. Yes sir.

Q. Did you read the receipt over? A. Yes sir.

Q. You knew the money had been paid? A. Yes sir.

Q. Did you suppose the receipt would be given you unless the money had been paid? A. No sir.

Q. You knew then the money had been paid? A. Yes sir.

Q. If you knew this receipt showed that the money had been paid by you, why did you say you only knew that the money had been paid from what Mr. Davis told you? A. I only knew this from what I got from this receipt. Then I got the receipt.

595 Q. Mr. Davis told you? A. Yes sir.

Q. You had his assurance, did you, that it had been paid? A. Yes sir.

Q. You knew that you could not get this receipt unless the money had been paid? A. Yes sir.

Q. What did you do with this receipt? A. I carried it home with me.

Q. How long did you keep this receipt? A. I kept it until some time in April 1900.

Q. The- you kept it from July 5th 1900 until April 1901? A. Yes sir.

Q. This was in your possession all the time? A. Yes sir.

Q. You knew that you had a receipt entitling you to a Patent; did you ever get the Patent? A. I did not.

Q. You had this receipt showing that you were entitled to a Patent? A. Yes sir.

Q. You knew that you were entitled to it. A. Yes sir.

Q. Did you ever undertake to ascertain who paid this money? A. No sir.

Q. Did you ever make any inquiries? A. No sir.

Q. You knew you had the benefit of the money? A. Yes sir; I knew that I had the receipt.

Q. Did you intend to re-pay that money? A. I cannot tell you just what my idea was in regards to it.

596 Q. Answer the question. Did you intend to re-pay the money? A. I intended to re-pay, when I sold this timber. I intended for the money to be re-paid.

Q. Did you make any effort to sell the timber? A. Yes sir. I offered to sell it to Mr. Alexander when he wanted me to sign these papers.

Q. What did you offer him? A. I offered, if he would pay me $1.00 per acre for it, that he could have it.

Q. Then when Mr. Alexander went to you to get you to give a note for this money, he did not tell you that the Martin-Alexander Company had advanced that money? A. Yes sir, I believe he said they had advanced it.

Q. You refused to give him any note or execute any paper unless he would give you $1.00 per acre for the land? A. Yes sir.

Q. Does that same thing apply to your wife? A. Yes sir.

Q. Did she have 160 acres? A. Yes sir.

Q. Then you demanded $320.00 from him before you would execute the paper? A. Yes sir.

Q. Did you think the land was worth that? A. Well, yes sir I—that is,

Q. That is, you thought the value of that land was $150.00 over and above what you had given for it. Yes sir, I thought it was.

Q. You still, believe that? A. Yes sir.

Q. When you and Mr. Dorsey and Mr. Davis were at Camden, did you know that Mr. Davis went up to Mr. Alexander's room and got the money and took it over to the Camden
597 Land Office? A. I did not know that he did only from him telling me. He did when he came back to the Bennett House. I did not see him.

Q. Did he tell you after you had gotten your receipt. While you were down there Mr. Alexander wanted you all to go up and execute notes for this money? A. No sir, as I remember.

Q. Let me see if I cannot refresh your memory; didn't he tell you that Alexander wanted you to come up and sign these notes, and didn't you and Mr. Dorsey say "Tell Mr. Alexander to wait until we get back to Pike City". A. If I did I have no recollection.

Q. You had no conversation of that kind at that time or at all with Davis? A. No sir.

Q. You know Mr. W. C. Davis? A. Yes sir.

Q. If you had had a conversation of that kind relative to signing the notes, do you think you would have remembered it? A. It seems to me that I would.

Q. Mr. Dorsey was there with you wasn't he? A. Yes sir.

Q. Why was it that you turned over Notice for Publication the over to Mr. Copeland and said it was because [it was be-

cause] he requested you to and yet you would not turn over me
your receipt? A. Let understand the question.

Q. You said you turned the Notice of Publication over to Mr. Copeland because he requested you to? A. Yes sir.

Q. Why were you not willing to turn the receipt over
398 to him? A. Simply because I had taken the obligation I had at Camden that I was taking it out for my own benefit; and if I would turn over those receipts, I did not see where I was going to be benefited.

Q. You did see where you was going to be benefited by having the Notice of Publication published? A. Yes sir, I knew they had to be advertised.

Q. You had taken the same oath at Camden before you got this Notice of Publication, hadn't you? A. Yes sir.

Q. The oath was fully as strong—your interest was stronger in reference to your entering this land for your own benefit, than the other wasn't it? A. Yes sir.

Q. But that did not deter you from turning over the Notice of Publication to Mr. Copeland? A. No sir.

Q. You knew in order for you to get a good title to that land that the Notice would have to be published in the paper? A. Yes sir.

Q. You wanted to complete your title to the land? A. Yes sir.

Q. You were willing then that Mr. Copeland or any one else might take those Notices and publish them in order that the land might be yours? A. Yes sir.

Q. You were willing to take money from whatever source it came in order that you might get a title to this land? A. Yes sir, I was willing it should be paid out.

Q. Did your conscience indicate to you that there was any thing wrong in that? A. No sir, I do not know that it did.

Q. Did you think there was anything wrong in allowing Copeland to pay for the Publication and to pay your expenses down there or to pay you the money? A. No sir; I do not think there was any thing wrong in a man paying anything, that he voluntarily did.

Q. The only time that you thought anything wrong, was when they came to you and asked you to give them the obligation showing that this money had been advanced by them to you. A. Yes sir; I did not see wherein I was going to be benefited.

Q. The other you could understand, that you were getting the land. A. Yes sir.

Q. But when they came to you to pay for the land, you did not see where you were going to be benefited, is that it? A.

I didn't object to paying for the land, if they taken the land in timber.

Q. You wanted to sell the whole thing clean and make $160.00 out of the transaction—$320.00—$160.00 for yourself and $160.0 for your wife? A. Yes sir.

Q. You stated that you intended to pay the money that you owed on the land, when you sold the land? A. Yes sir.

Q. You did sell the land? A. Yes sir.

Q. Did you pay any money on the land when you sold it? A. No sir.

Q. Did you provide that the party who bought it should pay any money on the land? A. I don't know.

600 Q. Then you sold the land and got your $25.00 and took no interest in seeing that any payment was made to the party that furnished the money? A. I did not.

Q. You changed you mind with regard in intending to pay for it? A. I supposed—of course Mr. Brunson did not say so—but I supposed from conversations we had had previous to the time that he bought this land of me—that I supposed that he was working in the behalf of this Company at the time he bought it.

Q. You did not ascertain this fact? A. Not at the time I bought it.

Q. Didn't you state here yesterday that you sold it to Brunson on his own account? A. Yes sir.

Q. There was no one, so far as you know, interested except Brunson? A. No sir, I did not know it.

Q. Did you know at that time, that Martin had sold his interest in the Company and had no further interest with the Martin-Alexander Lumber Company—had sold out to the Detroit Timber and Lumber Company? A. I knew that Mr. Martin had. I had been told so by Mr. Alexander.

Q. You knew that the Martin-Alexander Lumber Company did not own that property, but that the Detroit Timber and Lumber Co. were the owners of it? A. Yes sir.

Q. Whatever the condition was you did not concern yourself about how they were to get their money back? A. I never said anything to Mr. Brunson about it.

601 Q. You got your money from Mr. Brunson and you were satisfied in regard to the transaction so far as you were concerned? A. Yes sir.

Q. It did not interest you any further? A. No sir.

Q. You say that you never had a conversation with Mr. Alexander or Mr. Martin, either one, before you made this purchase of the land in regard to it? A. With Mr. Martin or Mr. Alexander?

Q. Yes sir. A. No sir.

Q. The only conversations you had were with Mr. Copeland and those you detail-d here? A. Yes sir.

Q. You stated, I believe, that there was no agreement or promise of any kind to [selll] them the land, or the timber on it or any part or interest in the land? A. No sir; there was no agreement made.

Q. Mr. Alexander called you into the office there, you and Mr. Dorsey and Mr. Davis and talked with you about signing these papers and you say that you refused to do so? A. Yes sir.

Q. And you all three left the office and went down to back of the Drug Store? A. Back of Dr. King's office.

Q. And had a conversation there, didn't you? A. Yes sir.

602 Q. In that conversation, didn't Mr. Davis tell you that he had promised Mr. Alexander down at Camden that he would execute a note when he got back home, and that he was going to keep his word, and didn't you tell Mr. Alexander, "if you wil- pay us a dollar an acre for our land, we will sign a contract too," and give him a note? A. Yes sir. I told him that if he would pay us a dollar an acre we would sign it.

Mr. Youmans: Did you sign it or name it?

The Witness: I don't know whether he mentioned a note or contract. I think it was just sign his papers.

Q. Whatever he wanted? A. Mr. Alexander didn't present a note there at all, either at that time,—or I didn't see any papers, or the other place either.

Q. Where? A. Back of Dr. King's office.

Q. You had been in Mr. Alexander's office immediately before that? A. Yes sir.

Q. He had read some papers to you there? A. Yes sir.

Q. You understood those were the papers he wanted you to sign? A. Yes sir.

Q. You were not making any objections to the papers, what you wanted was some money? A. No sir, I wanted pay for the right the United States Government give me. I thought they had give me the right, and I ought to have something for it.

Q. And you wanted a dollar an acre for it? And that is what you d-manded? A. Yes sir.

603 Q. You stated that Mr. Alexander told you that out of forty-three you were the only ones that refused to sign, and that the others signed the notes before the land was proved up: is that what you stated? A. Yes sir.

Q. What did you mean by that? A. I just meant what he said.

Q. Before the land was proved up? A. Yes sir.

Q. And the contracts afterwards? A. Yes sir.

Q. That was what you understood, Mr. Alexander to say, and what he did say? A. That is what I understood him to say.

Q. You stated, on the morning of the 9th of July, that some one come to see you, and asked you to sign the papers? A. On the morning of the 9th?

[A.] Yes sir. A. Mr. Copeland and Mr. Davis came down to where I was.

Q. Jim P. Copeland? A. Yes sir.

Q. What was it that they said to you? A. Mr. Copeland and Mr. Davis walked up close to where I was at work, and said Mr. Alexander sent him down there to get me to sign those papers.

Q. Did he say papers or "the note?" [Q.] He said papers, is my recollection. I told him I wouldn't sign them unless they come to my proposition that I had made before.

Q. That was all that conversation, was it? A. Yes sir, that was all of [—] I think.

604 Q. On the 10th you had a conversation with Mr. Alexander? A. Yes sir.

Q. Who was present at that conversation? A. No one, but I and Mr. Alexander.

Q. In that conversation he wanted you to sign the papers, and you again refused? A. Yes sir.

Q. And told him you would do so if he would give you a dollar an acre for the land? A. Yes sir.

Q. On the 11th, when he was at your house on the 11th,—or did he have a conversation with you on the 11th at any other place except your house? A. Yes sir, he came by where I was working.

Q. Was anybody with him? A. No sir.

Q. Did any one hear the conversation? A. No sir.

Q. When was it he was at your house? A. It was about noon. About near the middle of the day on the 11th.

Q. Who was with him? A. Mr. Staley, Mr. Jestus, and Mr. Davis.

Q. Didn't he, at that time, say to you in the presence of those gentlemen there, "I want you to sign the note: that is all I ask you: this money has been advanced to you, and if you should die, or anything should happen to me, no one would know that you had obtained this money, and I want you to sign the note." A. Yes sir, he asked me to sign the note.

Q. And you refused? A. Yes sir.

Q. Why did you refuse? A. Because he refused to pay me anything for it.

605 Q. Didn't you have a pretty good idea at that time who you owed the money to. A. I know they said they had paid it.

Q. And you knew of no one else who ever paid it? A. No sir.

Q. Did you ask Mr. Copeland who paid that money? A. No sir, I don't believe I did.

Q. Did he tell you who did? A. I don't know whether Mr. Copeland told me who paid it or not.

Q. You could have found out by asking Mr. Copeland what he said and thought about it? A. I suppose so.

Q. Did you say Mr. Alexander was down at Camden at the time you went there to make this entry? A. I only knew that by Mr. Davis saying so. I don't believe I saw him there.

Q. Didn't you see him on the train? A. Mr. Alexander was in company with us from Pike City to Smithton and he returned with us from Smithton to Pike City.

Q. You knew he was there from what Mr. Davis told you? A. Mr. Davis told me he was there.

Q. Did you know of any other sources from which Davis could have obtained the money? [—] No sir, I didn't.

Q. Therefore, you knew at the time these gentlemen were up there asking you to sign some obligations or some note that the Martin-Alexander Lumber Company were the parties who loaned you that money? A. Yes sir, I was confident.

Q. But still you refused to give them any evidence of that fact that you had borrowed the money or gotten the money or that the money had been paid on your land? A. 606 Yes sir, I refused.

Q. You would have done it if they had paid you $160.? A. Yes sir, I would have signed it, I told them I would.

Q. Was not the note the only thing that Mr. Alexander asked you to sign, at your house? A. The note was all the papers that I saw there.

Q. That was all the paper he asked you to sign; didn't he tell you at that time that you could sell the timber so far as that was concerned to anybody, and that all he wanted was some evidence to show that this money had been advanced to you for the purchase of this land? A. I don't remember that. If he said it I have no recollection of it. Mr. Alexander didn't talk to me, but very little at my house. He was talking to Mr. Dorsey and my wife.

Q. You were there, were you not? A. Yes sir, I was there.

Q. The only consolation that you gave him there was that he could get the money out of the timber when it was cut? A. Yes sir, I believe I made that remark: that he would get his money out of the timber when it was cut.

Q. Did you expect to cut the timber yourself? A. No sir, I didn't expect to cut it myself.

Q. You expected to sell it to some one who would cut it? A. Yes sir, I expected to sell it to them.

Q. To whom? A. Mr. Alexander.

Q. Did you refuse to make any contract to him for the sale of the timber? A. I refused to sign a contract and got nothing for it.

Q. You hadn't been out anything, had you? A. No sir, I hadn't been out anything.

607 Q. Did you intend to make something out of the transaction? A. Yes sir, I intended to be paid for the right the Government,—

Q. Hadn't you bought from the Government? A. Yes sir, but at the same time the Government gives us a right to sell things we buy.

Q. Did you ever expect to get more than 50 cents a thousand, at that time? A. No sir, I hadn't made any calculation.

Q. Was it not the amount that they were paying for timber at that time,—50 cents a thousand stumpage? A. I think that is about what it was going at,—the stumpage.

Q. If you had signed the note and sold them the timber at 50 cents a thousand, they would, as he told you, cancel your note and you would have the land left that you say was worth a dollar an acre? A. Yes sir, that is what he told me; that I would have the land left.

Q. And you could have sold the land to anybody you wanted to; did you see that note; you say that Mr. Alexander read you a note; did you see this note? A. No sir; I don't think I ever had it in my hands.

Q. You never heard it read but once, did you? A. I don't remember whether it was ever read but once. If it was, I have no recollection of it just now.

Q. What part of the note was that expression in, "for the purchase money of such and such tract of land"? A. It was somewheres near the commencement of the note, is my recollection.

Q. How did you happen to remember that fact? A. I just happen to remember that it was read in that way. I don't remember how it happened.

608 Q. That has been how long ago? A. That has been since July, 1900.

Q. Did you tell anybody about that fact of that expression being in the note. A. I don't know.

Q. You testified here yesterday? A. Yes sir.

Q. Did you make any mention of that fact to anybody; that the expression was in the note, until you testified here yesterday. When was the first time you told any one that that

expression was in the note? A. I don't remember when it was I told anyone, or whether I did tell anyone or not.

Q. Was it a typewritten, or a printed note or writing? A. I never had the note in my hand. I don't know that I ever looked on the face of it.

Q. Do you remember anyone that you told that that expression was in the note, until you testified here yesterady? A. I believe I told Mr. Schlierholz when he interrogated me once on the land.

Q. Where was that? A. At Kirby, Pike County, Arkansas.

Q. He took a statement from you at that time? A. Yes sir.

Q. You told him about it then? A. Yes sir, I think I did.

Q. You fell out with Mr. Copeland and Mr. Alexander about this matter, didn't you? A. I could not say that we had any particular falling out about it.

Q. You felt mad at them about it? A. I wasn't particularly mad with them, no sir.

609 Q. Have you been mad with them ever since? A. No sir, I have not. I do not hold malice against any man.

Q. You know Mr. Steve Leaken? A. Yes sir.

Q. You know him well, do you? A. Yes sir.

Q. He lives in the same community with you, does he not? A. Yes sir, he lives some four or five miles from me.

Q. Didn't you have a conversation with him at Kirby after you had had this trouble with Mr. Alexander about signing the note, with reference to the Martin-Alexander Lumber Company or Alexander and Copeland, in which you said that they were a set of thieves and you were going to do everything in the world that you could against them? A. No sir, if ever I had a conversation with Mr. Leaken, I have no recollection of it.

Q. You had no conversation of that kind with him? A. None that I have any recollection of. I don't think I ever had any such thing about them lands.

Q. You deny that, then? A. Yes sir, I deny saying that.

Q. Didn't you say to Mr. Brunson when he went up there to get you to execute [it] deed for the property, or see you about it, that, in substance, that they hadn't treated you right and that if they had loaned you this money, you were going down to Texarkana, and lie around until your belly was as smooth as a dollar, but that you would get an indictment against them? A. No sir, I never said that, as I can remember.

Q. You can remember, can't you; did you say that or didn't you say it? A. No sir, I never said it.

Q. Didn't you tell Brunson after the indictment was returned, when you was down here, that you wouldn't have been

so hard on those men before the Grand Jury if they
610 hadn't treated you as they had? A. No sir, I didn't.

Q. You never made any remark of that kind? A. No sir.

Q. You say you made a written statement to Mr. Schlierholz about that matter? A. Yes sir.

Q. Have you not been with Mr. Schlierholz most of the time since you have been down here? A. No sir.

Q. Have you not been with him a great deal of the time? A. No sir, I have not been with him a great deal.

Q. Has he not read over your statement to you, and asked you about it? A. He read over a little part of it.

Q. Was it your statement he had in his hands while you were being examined? A. I suppose it was. I don't know that it was.

Q. Did he read it over to you? A. No sir, he didn't read it.

Q. What part did he read over to you?. A. I don't know that I can call to my memory as to what part it was. He asked me a question or two and read over a little portion; but I can't call to mind now just what it was.

Q. You don't remember what question it was? A. No sir.

Q. You don't remember what part of the statement he read over to you? A. No sir, I don't call to memory now just what part.

611 Re-Examination

By Mr. Youmans:

Q. You stated that you didn't see any money paid out at the land office? A. Yes sir. I didn't see it paid.

Q. The information that you had with regard to that, came from Mr. Davis? A. Yes sir.

Q. You went into the land office after dinner? A. Yes sir.

Q. [Un] company with Mr. Davis, his wife, your wife, and Mr. Dorsey? A. Yes sir.

Judge Read: I object to that. That has all been gone over in direct examination, and cross-examination. I don't think it is fair for the attorney to go over it again. The allegation of the indictment is that he entered the land. It is not charged that the Martin-Alexander Lumber Company or anybody else paid the money, but that he entered the land; and the only thing that is there in connection with these defendants is in connection with the entry and agreement whereby the Martin-Alexander Lumber Company was to get the timber on the land. The offer to prove that these men didn't get the money is not material. The indictment does not charge that this was an entry by the Martin-Alexander Lumber Company in the name

of Moran; but it charges that Moran himself made the entry and that he did it unlawfully, and in connection with the entry agreed to sell to the Martin-Alexander Lumber Company. What difference does it make who paid the money?

Mr. Youmans: I want to elucidate the matters that were asked about any agreement. I simply want to bring out some matters of detail with reference to the facts that were brought out in cross-examination. The question I have already asked him on this re-direct examination, standing the way I have asked it, and the answer he gave,—

612 The Court: I have not ruled on that at all.

Mr. Youmans: I simply want to bring out the fact that the money was paid by Mr. Davis, and it occurred, and the entry was made by him, or the proof, in the afternoon or after dinner of that day.

The Court: You have gone over that.

Mr. Youmans: I don't recall that.

The Court: Ask him what time the entry was made.

Mr. Youmans: He said it was immediately after dinner. (To the witness) Was it not? A. A short time after noon.

Q. You were asked a question in regard to the value of the land, and you said it was worth a dollar an acre; did you mean with the timber on it?

Mr. Hemingway: I ask the court now, if an attempt to prove that this land is worth less than $800, is competent. It is not competent for them to prove that it was worth less than that.

Objection overruled. Defendants except.

Q. You were asked what the land was worth, and you said a dollar an acre; did you mean with or without the timber? A. You mean I was asked the question at the land office? [A.] No sir, just a few moments [—] Judge Read asked you a question as to the value of your land, and you said it was worth a dollar an acre; did you mean with or without the timber? A. It was worth a dollar an acre without the timber. I don't know that I understood him on that land when I answered him, if that is what he was driving at.

Q. You were also asked in regard to signing the note; when you first went to Mr. Alexander's office after you returned to Camden, was the note alone mentioned? A. No sir, the note and the contract.

613 Q. You stated that you signed a deed afterwards, when was it? A. That I signed the deed?

Q. Yes, sir. A. I signed a quit claim to Mr. Brunson. It was sometime in April, 1900.

Q. You say that you understood from Mr. Brunson that that settled the matter with the Martin-Alecander Lumber Company?

Objected to. Objection sustained.

The Witness: Mr. Brunson had come to see me,—

The Court: You didn't get any information from Brunson at all that he was going to pay these other people: you said that?

The Witness: Yes, sir, I said that the day I sold to him, I didn't.

The Court: Go on.

Q. Did you get any information from Mr. Brunson or have any talk with him in regard to that matter at any other time?

Objected to.

Mr. Youmans: I want to show that Mr. Brunson was there for the purpose of effecting a settlement with him.

Q. What was your conversation with Mr. Brunson with reference to the matter of the money that had been paid? A. Mr. Brunson came to me twice previous to the time he came and proposed to buy it. When he came the first time he claimed that he was sent by this company,—

Objected to.

Mr. Youmans: The only effect in this that I can see, is to effect the credibility of the witness. That is all I want to bring out this far. It occurs to me that the only effect of the testimony that has been brought out thus far, is as to his credibility and to base an argument on that he didn't care whether or not the money was ever repaid or not.

Mr. Hemingway: In direct examination, the wit-
614 ness stated expressly that Brunson was buying for his own interest, and stated the same on cross-examination. I do not think after he goes over it on direct examination and gives a positive statement that Brunson was buying in his own interest that he ought to be permitted to go over the same ground to show that this statement is not true.

The Court: Gentlemen of the jury, I am going to let this testimony go to you simply for the purpose of showing the circumstances under which he made the sale. The fact that he made the sale or to whom, is not in any way yet, inculpatory of these defendants here.

Q. Go ahead and tell what conversation passed between you and Mr. Brunson when he first came to you. A. When he came to me he told me that Mr. Alexander sent him up

there to see me and get me to sign those papers, notes and contracts.

Q. Tell the rest of it. A. I asked what proposition did they send; did they send any proposition. He said he didn't send any proposition; he only just wanted me to sign them and send them back to him. I told him that I wouldn't do it unless they would pay me, for the Government give me the right,—I don't know that there was anything further then. He come again in a short time, and about the same conversation taken place again.

Q. That was all then of the second time? A. Yes, sir.

Q. Did anything occur the next time? A. The next time he come he proposed to buy this land himself.

Q. He said he would buy it outright? A. Yes, sir.

Q. Was that all that passed between you? A. Yes, sir, that was all in regard to it, to sell it to him.

615 Q. You sold it to him and gave him a quit claim deed: you say you expected to sell the timber to the Martin-Alexander Lumber Company? A. Yes, sir, I supposed from what Mr. Brunson had said to me previous to the date he bought, that he was,—

Objected to.

Q. I mean prior to that time; without any reference to Mr. Brunson's transactions; that you expected to sell the timber to the Martin-Alexander Lumber Company? A. Yes, sir.

Q. And you said that you expected to make something out of it? A. Yes, sir.

Q. Out of the land that you entered? A. Yes, sir, I expected to be benefitted by it.

Recross Examination

By Judge Read:

Q. How long before the deed was made was it that Brunson came the first time? A. How long was it from the first time when Brunson came until the deed was made?

[A.] Yes, sir. A. I don't know that I,—

Q. When was it he first came, what month was it? A. It was in April, I reckon.

Q. The first time he came up there? A. Yes, sir.

Q. April, 1901? A. Yes, sir.

Q. That was the first time he came up? A. Yes, sir.

And further the witness saith not.

616 Bill Dorsey, a witness called for the Government, being first duly sworn, testifies as follows:

Direct Examination

By Mr. Yeumans:

Q. Your name is Bill Dorsey? A. Yes, sir.

Q. Where do you live? A. I live in Clark County, Arkansas.

Q. Where did you live in April, 1900? A. In Pike City.

Q. What were you doing there? A. I was working there at the mill.

Q. Whose mill? A. The Martin-Alexander Lumpany Company.

Q. Did you ever make an entry of land in Pike County? A. Yes, sir.

Q. During the time that you were working for the Company? A. Yes, sir.

Q. Look at the paper I now show you and see if it is the application you made at Camden? (witness looks at paper) A. Yes, sir, that looks like it.

Q. How did you come to make this entry; how was the matter brought to your attention; how did it come to enter your mind? A. What was the first I ever knowed of it?

Q. Yes, that is it? A. I noticed it in the paper there.

Q. Did you talk with anybody about it? A. No, sir, I did not.

Q. Did you just come on down and make this application without doing anything? A. No, sir, Mr. Copeland
617 came to where I was at work and wanted to know if I wanted to enter some land or some thing or other like that.

Q. Where were you at work? A. I was firing kilns there at the mill.

Q. Give the conversation? A. He said I could get the land if I wanted it.

Q. Did he tell you how you could get it? A. I don't remember.

Q. Was that all that passed between you? A. He said he would go out and show it to me.

Q. Did he go out and show it to you? A. Yes sir.

Q. Did you ask him to go? A. No sir.

Q. Who went with you out there? A. Mr. Moran and his wife and Mr. Davis and his wife.

Q. What did you do when you got there? A. We just drove about over it for a while and took our dinners and stayed out there very near all day.

Q. Who pointed out the land? A. Mr. Copeland.

Q. How long after that did you go to Camden? A. I don't remember.

Q. Was it long? A. It was not very long.

Q. What arrangements were made with you in reference to Camden, if any? A. I don't remember that there was any.

Q. You did go to Camden? A. Yes I went.

618 Q. Who paid your expenses down there? A. Mr. Davis.

Q. And when you got there, you made this application that I have just shown you? A. Yes sir; I made one, I reckon that is it.

Q. That is your signature there? A. Yes sir, it looks like it.

Mr. Youmans: I will introduce the Application of Bill Dorsey in evidence. It is dated, April 10th 1900.

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619 Q. Did you get a Notice for Publication at the Land Office? A. Yes sir.

Q. What did you do with it? A. I don't remember what I done with it. I gave it to some one, but I don't remember who.

620 Q. After the expiration of the time fixed in the Notice what did you do then? A. That is all I done. I just turned it over to who ever it was. I have forgotten.

Q. At the expiration of the time mentioned in the Notice did you go to Camden again? A. Yes sir.

Q. Who went with you? A. Me and Mr. Moran and his wife and Mr. Davis and his wife.

Q. The same party? A. Yes sir.

Q. Who paid your expenses at that time? A. Mr. Davis.

Q. Did you know that it would take $2.50 per acre to enter this land? A. Yes sir.

Q. Did you have the money? A. No sir.

Q. How did you expect to get it; had you made any arrangements with any body with regard to it? A. I don't know as I had.

Q. You went on down there and then what did you do when you got there? A. Mr. Davis he said he had got the money for us and turned it over and we went up and got our receipts.

Q. Did you see the money? A. No sir.

Q. You got a receipt, did you? A. Yes sir.

Q. Is the paper I now show you the receipt that you got? A. (Witness takes paper) I don't know whether it is or not. I got a receipt though.

621 Q. That paper calls for the land that you enter-d in your application? A. Yes sir.

Mr. Youmans. I will introduce the Final Receipt of Bill Dorsey dates, July 5th 1900 in evidence—

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Q. You made proof there [dindt] you, as required by law? A. Yes sir.

Q. Is the paper I now show you the Proof that you made? A. I guess that is it.

Mr. Youmans. I will introduce that Proof in evidence.

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624 Q. What did you do with your receipt? A. I kept it for quite awhile. I don't remember how long.

Q. Did you have any conversation with Mr. Copeland or Mr. Alexander with regard to the receipt? A. Yes sir.

625 Q. When? A. Why, some time after we got back from Camden from making our proofs. I don't remember the date.

Q. How did that come about? A. Mr. Davis came to where I was at work and told me they wanted our receipts.

Q. What did you do? A. Mr. Moran said "We will go up there and see them" and we went up there.

Q. Where? A. At the office.

Q. Who was there when you got there? A. I don't remember any body but Mr. Alexander.

Q. Did you have any conversation with him? A. Yes sir.

Q. What did he say? A. He wanted our receipts. I don't remember what was said.

Q. Was there anything said about the note—about signing the notes or the contract or anything of that kind? A. Yes sir he had a contract.

Q. Did he have the notes there? A. Yes sir I believe he did.

Q. What did he want you to do with reference to them? A. I am not positive whether he had a note or not. I know he had the contract.

Q. What was said about the contract, if anything? A. He wanted us to sign it.

Q. Did you sign it? A. No sir.

Q. Did anything else happen there; any more conversation? A. I don't remember.

626 Q. What did you do? A. We just left the office.

Q. Did you have any other conve-sation with him at any other time about that matter? A. Yes sir.

Q. Where? A. We had some little talk with him about it out there in town.

Q. What was that? A. He wanted us to sign his contract.

Q. And you refused to sign it? A. Yes sir.

Q. Was that the substance of it? A. I think so.

Q. Did you have any conversation with him any where else. A. Yes sir, we had a talk with him at Mr. Moran's house.

Q. When was that—later? A. Yes sir.

Q. What conversation was that? A. He wanted us to sign a note for the money.

Q. Did he say anything about the contract then? A. No sir.

Q. Did you sign it? A. No sir.

Q. Did you have any conversation with Mr. Copeland in regard to it—was he there? A. No sir, he was not there.

Q. Did you have any conversation with Mr. Copeland any where about it? A. Mr. Copeland and Mr. Davis came to where I was at work one time and he asked me to sign a note.

Q. Who? A. Mr. Copeland.

627 Q. Was that all he said? A. I believe so. Didn't say but a few words and then left.

Cross-Examination

By Judge Read:

Q. You had a conversation with Mr. Copeland out in the yard in which he wanted you to sign the note; he didn't say anything about the contract? A. Yes sir.

Q. And that was only a few words and he left you. A. Yes sir.

Q. Then you had a conversation with Mr. Alexander at Mr. Moran's house? A. Yes sir.

Q. In which he asked you to sign the note? A. Yes sir.

Q. Didn't he tell you he wanted some evidence of the fact [the] the money was paid for you? A. Yes sir, I believe he did.

Q. Didn't he say to you at that time that you could sell the timber to any one you wanted to? A. Yes sir.

Q. All he wanted was a note; and that you could sell the timber to any body you would see fit? A. Yes sir.

Q. Mr. Moran and Mrs. Moran were there at the time? A. Yes sir.

Q. When you first read of being able to take up land under "Timber and Stone" act what attracted your attention to it; or was it an advertisement in the paper? A. Yes sir.

Q. Did you come to any conclusion about it; did
628 you get to thinking about it. A. Not a great deal, no sir.

Q. Did you talk to any body about it until you talked to Mr. Copeland; didn't you talk to some of these entrymen. A. I don't remember whether I do or not; I had heard a little about it but I don't know as I asked any particulars about it.

Q. What was it Mr. Copeland said to you when you did meet him? A. He asked me if I wanted to take up some land.

Q. What did you tell him; didn't you tell him that you didn't have the money to take it up with? A. I don't remember whether I did or not.

Q. Did he tell you in that conversation that you could borrow the money, or at any time? A. It seems like he said something about the money on the same day we was in the woods, but I am not positive about it.

Q. You said that you had to borrow money if you were going to take up the land? A. Yes sir.

Q. You didn't have the money yourself? A. No sir.

Q. And you knew that you were going to have to borrow it if you bought the land? A. Yes sir.

Q. When you went out to the land you say that Mr. Copeland went with you? A. Yes sir.

Q. How long were you out there? A. We got back along in the evening some time. I don't remember what time. It was getting along in the evening though right smart.

Q. Did he point out the land to you? A. After we got there, we drove around and he told us we were on the land.

Q. Didn't you go out and walk around over the
629 land? A. We got out and got dinner there. That is about all the walking we done. We knocked around right smart.

Q. Did you walk around all over the land you wanted to enter at one time. A. I don't remember.

Q. You don't say you didn't, do you? A. No, if he was on it for dinner, we was walking on it.

Q. Did you walk around over the land that you went to get yourself? A. I expect I did.

Q. Didn't he show you the land that you went to get yourself? A. I don't recollect whether he did or not,—whether he pointed it out directly to me or not. I don't know whether he did or not.

Q. Did you know that you had to see the land and go on it before you could make an entry? A. Yes sir.

Q. You were there for that purpose? A. Yes sir.

Q. You evidently went on the land and walked around over it and examined it: did you see whether there were trees on it, or grass. A. Yes sir, there were trees on it.

Q. What kind of trees? [—] Hickory, pine and oak.

Q. You looked at all that? A. Yes sir.

Q. Posted yourself as to the condition of the land? A. Yes sir.

Q. When you went down to Camden to make your final proof of the matter,—you had to go down there for that
630 purpose, didn't you? A. Yes sir.

Q. Wasn't you asked this question, "Are you acquainted with the land above described by personal inspection of each of its smalles- legal subdivisions? Ans.—I am. Ques. When and in what manner was such inspection made? Ans.—

About the 1st of April, 1900, by riding and walking over same", was that true? A. Yes sir, I reckon it was.

Q. You swore to it there: you told the officers there that you had done that, didn't you? A. Yes sir.

Q. That was the truth, was it not? A. Yes sir.

Q. You told them that the estimated market value of the timber standing on the land was about $3. per acre? A. I don't remember what I told them about that.

Q. Did you tell them the truth, whatever you did tell? A. Yes sir.

Q. When you went down there was Mr. Alexander at Camden when you went down to make the final payment? A. Yes sir, he was there.

Q. Did you see him there? A. Yes sir.

Q. Where did you see him? A. I seen him there in town somewhere. I don't remember where.

Q. Who was with you when you saw him? A. I don't remember that.

Q. Did you see him there in town that day? A. Yes sir.

Q. Did you know that you were going to get the money from Mr. Alexander? A. I suppose that was where it was.

631 Q. Mr. Copeland had told you that the Martin-Alexander Lumber Company would let you have the money to enter this land, hadn't he? A. I don't know as he told me.

Q. You understood you were going to get the money from the Martin-Alexander Lumber Company, to enter the land? A. Yes sir.

Q. Did you get the money at Camden? A. No sir.

Q. Who paid it? A. Mr. Davis.

Q. Who paid it into the office,—did he? A. Yes sir.

Q. What time did you go over to make your entry? A. I don't remember.

Q. Who went with you? A. Mr. Moran, and his wife, and Mr. Davis and his wife.

Q. Did they get anything after you made the entries? A. Yes sir, we got a paper.

Q. What was that paper? A. I reckon it was the publication, as well as I recollect.

Q. That was the first time you went down was it not? A. Yes sir.

Q. I am talking about the last time. A. Yes sir, we got a receipt the last time.

Q. Who gave you that? A. The office man there. I don't know who it was.

Q. What did you do with it? A. I kept it for a while.

Q. How long? A. I don't remember how long. Quite a while.

Q. Are you related to Mr. Moran in any way? A. No sir.

Q. Did you and Moran go back all the way from Pike City down there together? A. Yes sir.

632 Q. On both trips? A. Yes sir.

Q. Did you and he have any talk about this matter? A. I expect there was something said about it. I don't remember very much about it.

Q. You and he talked over the propriety of making this entry? A. Yes sir.

Q. Whether you had the right to do it, or not? A. I don't know.

Q. Did you and he talk about where you were going to get the money from? A. I don't remember that.

Q. Did you have a conversation with Davis down there about the money, after you got down to Camden? A. Yes sir, I asked him when we went out in town if he knowed anything about our money and he said he had paid it in.

Q. Who was with you when you asked him that? A. I don't know as there was anybody.

Q. After you had all gone over there and signed your final proof, and gotten your receipts, did Davis tell you that Mr. Alexander wanted to see you up at the hotel? A. Yes sir, I believe he did.

Q. He wanted you to come up there and sign the note, didn't he? A. I don't know whether it was a note or not. He just wanted to see us.

Q. Didn't he say he wanted you to sign the notes up to the hotel; that he had the notes ready and wanted you all to come up there? A. I don't remember. Anyhow he

633 said he wanted to see us.

Q. Was Moran with you at that time? A. I don't remember.

[—] And didn't you and Moran tell Davis to tell Mr. Alexander that you would see him when you got to Pike City? A. No. Some of them got in a hurry and wanted to go off on the train, and some of them said something about it.

Q. Wasn't it Mr. Moran who said he would talk to him when he got to Pike City? A. I don't remember.

Q. Some one said that in the crowd, didn't they? A. I don't remember.

Q. You said a while ago, that they were in a hurry to get off; what was said about that? A. Something was said about wanting to get off home; that they would see him when they got to Pike City.

Q. I want to know who it was said that? A. I don't know.

Q. There was nobody down there except you and Davis and Moran,—no man folks, were there? A. Of our crowd?

[A.] Yes. [Q.] That is all.

Q. Mr. Davis came to you and said that Mr. Alexander wanted to see you? A. Yes sir.

Q. And something was said about you wanting to talk to him, when you got to Pike City: it must have been you, or Moran said that. A. If I said it, I have forgotten it.

Q. What do you think about it: it must have been Moran then: did you hear anybody else talking about it?: of course you can give your best recollection of it, of what was
634 said? A. I don't recollect it.

Q. What is your best recollection about it? A. I think we would see him when we got home.

Q. Didn't you and Moran have a conversation about that,—didn't you conclude that you had better not do anything there, but wait until you got back to Pike City. A. No sir.

Q. Didn't you and Moran conclude that you had better not do anything, but wait until you got back to Pike City? A. No sir.

Q. You and Moran hadn't talked about that matter at all? A. As we went on down?

Q. Yes, or at Camden. [Q.] If we had, I don't remember.

Q. When was it you and Moran talked about whether you would sign the notes or not? A. Down there?

[A.] Yes. [Q.] I don't remember anything about that down there.

Q. When was it you talked about it away from there,—about signing the notes? A. What was said about it?

Q. When was it you and Moran talked about it, that you were not going to sign the notes? A. I think I told him. Alexander that, in his office.

Q. Hadn't you and Moran talked about that before you to
came up their office? A. Yes sir, we knowed what we was going up there for.

Q. Hadn't he said to you, or you to him, that you were not going to sign [and] notes before you went up there? A. Yes sir, I believe so.

Q. Who was it that said that, Moran or you,—did
635 Moran say he was not going to sign any notes? A. I don't remember how it came up?

Q. What was the substance of what was said, as you and he agreed together: was it not, as suggested, that you would not sign any notes or anything, unless they paid you a dollar an acre for the land? A. Yes sir.

Q. That was after you got back from Pike City? A. Yes sir.

Q. That was, as you remember, when you went up to Alexander's office? A. I don't remember whether it was or not. It was there in Pike somewhere.

Q. That you and he had that agreement together? A. Yes sir.

Q. Can you tell when it was that you and Moran first talked about that? A. After we got back?

Q. Before, either: I want to know if you didn't talk about it before you went down to Camden? A. About this note business?

Q. Yes sir. A. No sir, not as I know of.

Q. Did you talk anything about signing this note in going down to Camden? A. No sir. I don't know how it was down there. I don't know nothing about talking.

Q. When you come back to Pike City, then it was that you and Moran agreed that you wouldn't sign anything unless they paid you a dollar an acre for your land. A. Yes sir.

Q. Was that as you went up to Alexander's office? A. I don't remember whether it was or not.

636 Q. It was either as you were going up there or coming away, was it not? A. It was there somewhere.

Q. Who made that suggestion about a dollar an acre? A. Mr. Moran.

Q. Did not Moran tell Davis that he ought not to sign either, until he got a dollar an acre for the land? A. I don't know whether he did or not.

Q. In your presence when you were all down there back of the drugstore? A. We were all down there, but I cannot recollect.

Q. Mr. Moran told you that you and he ought not to sign unless you got a dollar an acre for that land? A. Yes sir, that is my recollection.

Q. He is the one that suggested it to you? A. Yes sir.

Q. You entered that land for your own benefit, did you? A. Yes sir.

Q. You hadn't made any contract or agreement, or promise to anyone to sell them any part of it, or the timber on the land? A. No sir.

Q. You never did make any agreement of that kind? A. No sir.

Q. To whom did you finally sell it? A. **Brunson.**

Q. For how much? A. $75.

Q. You never paid back the money that was advanced on the land? A. No sir. If there was anything said about it, I have forgotten. I don't think there was.

Q. When you entered this land you stated that you had made no other application under this act, and had not

637 "directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States, may inure in whole or in

part to the benefit of any person except yourself". That was true then, was it? A. Yes sir.

Q. That is absolutely true, is it? A. Yes sir.

Q. I believe you stated that up at Mr. Moran's house, Mr. Alexander stated to you and Moran, and Moran's wife that all he wanted was for you to sign the note? A. Yes sir, that is what he said.

Q. And that, as far as the timber on the land was concerned, that you could do what you pleased? A. Yes sir.

Mr. Youmans: You stated that at the first conversation at his office, he stated you could sell the land? A. Yes sir.

And further the witness saith not.

Mr. Youmans: I have a number of entries here that I want to introduce; the applications and the proof of the claimants and the final receipts. The first is that of Barbery A. Garrison, dated March, 20, 1900.

Judge Read: These are parties who are not present?

Mr. Youmans: I think they are not present.

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639 Mr. Youmans: I will introduce the final proof and final receipt of Barbery A. Garrison:

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642 Mr. Youmans: I will also introduce the application of Sherman L. Garrison, dated March 20th, 1900.

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644 Mr. Youmans: I will also introduce the final proof of Sherman L. Garrison, dated the 6th of June, 1900.

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647 Mr. Youmans: I will also introduce the final receipt of Sherman L. Garrison:

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Mr. Youmans: I will introduce the application of Bedford F. Patterson, dated the 15th day of February, 1900:

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649 Mr. Youmans: I will also introduce the proof of Bedford F. Patterson dated the 2nd of May, 1900, and the final receipt of Bedford F. Patterson of the same date:

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652 Mr. Youmans: I will introduce the application of John H. Scott, dated June 9th, 1899. Also the final proof and receipt of John H. Scott:

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657 Mr. Youmans: I will introduce the application of Jim P. Copeland; also final proof of Jim P. Copeland, and the receipt of Jim P. Copeland:

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662 Mr. Youmans: I will also introduce the application of Caroline H. Means. She seems to have made a separate application from the form. I will introduce that application in connection with the form; also the final proof of Caroline H. Means, the testimony of one of her witnesses, Jim P. Copeland, and the receiver's receipt of Caroline H. Means:

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670 Mr. Youmans: I will introduce the application of Joseph O. Means; also the testimony of the claimant, and the final receipt:

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675 Mr. Youmans: I will also introduce the application of Martha Gregory, together with the affidavit in writing in addition to the one on the printed form, the testimony of the applicant and the receiver's receipt:

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681 Mr. Youmans: I will also introduce the application of Rosa L. Anderson, also the testimony of the claimant, and the receiver's receipt:

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687 Mr. Youmans: Here is the application of Wm. F. Anderson. He is here. Do you want me to introduce him on that?

Judge Read: You can prove that.

Mr. Youmans: I will introduce the application of Wm. F. Anderson dated January 30, 1900, and the testimony of the claimant and the receiver's receipt:

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692 Mr. Youmans: I will introduce the application, the final testimony and Receiver's receipt of George W. Cooper:

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697 Mr. Youmans: I will also introduce the application, final proof and Receipt of Willie Cooper:

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702 Mr. Youmans: I will also introduce the application, final testimony and receipt of Thomas Roberts:

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708 Mr. Youmans: I will introduce the application, final proof and final receipt of Mittie C. Roberts:

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713 Mr. Youmans: I will introduce the application, final testimony and receipt of Jim S. Pennington:

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718 Mr. Youmans: I will also introduce the application, final proof and receipt of Jennie V. Pennington:

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723 Mr. Youmans: I will also introduce the application, final proof and receipt of Charles W. Mackey:

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728 Mr. Youmans: I will also introduce the application, final proof and receipt of Carrie M. Hicks:

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733 Mr. Youmans: I will also introduce the application, final proof and receipt of Alvin Pry:

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739 J. R. Neal, a witness called for the Government, being [fisrt] duly sworn testifies as follows:

Direct Examination

By Mr. Youmans:

Q. What is your name? A. J. R. Neal.

Q. Where do you reside? A. Pike City.

Q. What is your business? A. I am in the Drug business there.

Q. Were you ever in the employ of the Martin-Alexander Lumber Company? A. Yes sir.

Q. You are then acquainted with Mr. Martin and Mr. Alexander and Mr. Jim P. Copeland? A. Yes sir.

Q. State whether or not you ever had any conversation with Mr. Copeland relative to the entry of public land in Pike County? A. I had a short conversation one morning I believe when we rode out through the country. That is, we partly rode together.

Q. Detail the conversation as nearly as you can [reccolect] it? A. It was very short. There was nothing very much

said. He asked me why I didn't take up a tract of land there and he said something to the effect—he said "this is Bill's there".

The Court: This is Bill Copeland's land there?
The Witness: Yes sir.

Q. What reply did you make to him? A. I told him I didn't know that I cared to take up an entry.
Q. Was that all that passed between you? A. Yes sir, that was all the conversation. I was going a different way from the way he was going then and we separated.
740 Q. Did he give any reasons for making the suggestion? A. No sir.
Q. He just made that remark and that was all? A. Yes sir.
Q. Do you know John H. Scott? A. Yes sir.
Q. Who was he? A. John H. Scott?
Q. Yes sir. A. He was John Scott of Pike City, he boarded with me quite a while.
Q. He lived there did he? A. Yes sir.
Q. What was he doing? A. He was working at the Planer there.
Q. For the Martin-Alexander Lumber Co. A. Yes sir, at the time he boarded with me. He boarded with me for nearly a year.
Q. Do you know John H. Wilson? A. Yes sir.
Q. What did he do? A. He was book-keeper for the Company, there.
Q. The Martin-Alexander Lumber Company? A. Yes sir.
Q. Do you know where he is now? A. No sir.
Q. Do you know Joseph O. Means? A. Yes sir.
Q. Did you know him at Pike City? A. Yes sir.
741 Q. What was he doing there? A. He was Superintendent of the works there.
Q. The Martin-Alexander Lumber Company? A. Yes sir.
Q. Do you know Caroline H. Means? A. That is his wife, I suppose. Mrs. Means.
Q. Of course I do not know whether it is or not? A. They were the only people there by that name. Mr. and Mrs. Joe Means.
Q. He had a wife there, had he? A. Yes sir.
Q. Do you know where he is now? A. No sir. I don't.
Q. Did you know Bill D. Copeland? A. Yes sir.
Q. Is he the son of the defendant Jim P. Copeland? A. Yes sir.
Q. What did he do there at Pike City, say in the Spring of 1900? A. I don't remember. He worked a little at the saw-mill there, I do not know just how much though. He

worked [ocassionally] I don't think he worked a great deal though.

Q. Do you know William F. Anderson? A. Yes sir.
Q. Was he in the employ of the Company? A. Yes sir.
Q. What did he do? A. He was saw-filer.
Q. He is here? A. Yes sir.

Q. Do you know Rosa L. Anderson? A. Yes sir.
742 Q. The wife of William F. Anderson? A. Yes sir.
Q. Do you know Gus G. Copeland? A. Yes sir.

Q. What was he doing in the Spring of 1900? A. He worked there awhile.
Q. For whom? A. For this Company?
Q. The Martin-Alexander Lumber Company? A. Yes sir he was working there.
Q. Do you know Bedford F. Patterson? A. Yes sir. I didn't know him by that name, Bedford, we knew B. F. Anderson.
Q. What was he doing there? A. He had two or three jobs there. He drove a team awhile, and then I think he graded lumber or shoved lumber off.
Q. Where is he now? A. I think he is at Britsell, Arkansas.
Q. Alvin Pry, did you know him? A. Yes sir.
Q. What did he do? A. He was yard foreman.
Q. For the Martin-Alexander Lumber Company? A. Yes sir.
Q. Is he here? A. Yes sir.
Q. Do you know George W. Cooper? A. Yes sir.
Q. What did he do? A. He ran the dinkey. He was engineer.

Q. For the Martin-Alexander Lumber Co.? A. Yes
743 sir.

Q. Do you know Willie Cooper? A. Yes sir.
Q. Who was that? A. That was his wife.
Q. Do you know where Cooper and his wife are now? A. They were in Louisianna, a short time ago.
Q. Do you know Thomas Roberts? A. Yes sir.
Q. What did he do? A. He worked at the planer mill.
Q. For the Martin-Alexander Lumber Company? A. Yes sir.
Q. Do you know Mittie C. Roberts? A. Yes sir.
Q. Who is she? A. The wife of Thomas Roberts.
Q. Where are they now? A. They live at Pike City.
Q. Do you know Sherman L. Garrison? A. Yes sir.
Q. What did he do? A. He worked on the tram there; on the lumber stack.
Q. For the Martin-Alexander Lumber Company? A. Yes sir. He was grader or something.

Q. Do you know Barbary A. Garrison? A. Yes sir.
Q. Where are they now? A. I suppose they are in about Bristoll, now.
Q. Do you know Jim S. Pennington? A. Yes sir.
744 Q. What did he do? A. He was Planer-foreman for the Martin-Alexander Lumber Co.
Q. Did you know Jennie V. Pennington? A. Yes sir.
Q. Who was she? A. His wife.
Q. Where are they now? A. They are here.
Q. Do you know Charles M. Mackey? A. Yes sir.
Q. What did he do? He was assistant at the Planer shed there.
Q. For whom? [—] The Martin-Alexander Lumber Company.
Q. Where is he now? A. I don't know. I suppose he is in Louisianna.
Q. Did you know Carrie M. Hicks? A. Yes sir.
Q. Where is she now? A. She is in Louisianna.
Q. Who was she? A. She was the wife of Mr. Ed Hicks.
Q. What did he do? A. He worked there at the planer, grading I believe, or something for the Martin-Alexander Lumber Company.
Q. Did you ever have a conversation with any body else there in reference to the entering of any land? A. I have had a great many conversations in regard to this timber business.
Q. I mean with either Mr. Martin, Mr. Alexander or Mr. Copeland? A. I have had conversations with Mr. Mar-
745 tin. I had a very short conversation with Mr. Alexander one time that I remember of. He asked me some thing about taking an entry out for—something—if I wouldn't like to take one.
Q. Was that all that passed between you? A. Yes sir that was about the size of it.
Q. Was there anything stated about the costs of it? A. No sir it was not mentioned?
Q. Are you acquainted with the signature of Mr. Copeland? (showing witness a letter) A. Yes sir. That is [is] his hand [writeing].
Q. Is that his signature there? A. Yes sir that is his signature.

The Court. Is that offered in evidence?
Mr. Youmans. Yes sir.
The Court. Is there any objection to [ti]?
Judge Read. One moment if your Honor pleases. I do not think it is pertinent to the issues. We object to it because it is not pertinent to the issues and it is immaterial.

The letter was passed to the Court.

The Court. What is the objection to this?

Mr. Youmans. That is a letter connected with the granting of the Patent of this land.

The Court. The land that belongs to him?

Mr. Youmans. Yes sir.

The Court. What is the objection to it?

Mr. Youmans. To show the representations that it made in that letter to the department and the reasons for them; and I expect to show that the representations made there were true.

It is already partly in proof that Mr. Copeland had made
746 a contract as to the land he entered with the Martin-Alexander Lumber Co. It appeared by his own statement to one of the witnesses, that he borrowed the money for it. It appeared by his own statement that he made a contract to sell the timber; it is shown that the contract is for 50 cents a thousand; and that the timber was worth $3.00 per acre. The statement in there, which the court will see, I will not repeat. It seems to me, that, under the charge of conspiracy in this indictment, when the charge is to both possession and title, that this is entirely pertinent and competent,—all the representations that he made in regard to it.

Judge Read. That does not tend, in any way, to support the charge of conspiracy, or support any other charge, that I know of, in connection with this indictment. He is simply writing to the Government, and asking why a final receipt has not been issued to him.

Mr. Youmans. That is true. That part of it I did not recollect. It is the other that I think is material, in connection with the other circumstances in this case. The proof in this case shows that he was in the employ of the Martin-Alexander Lumber Co. [whenn] he made this entry, and the inference is fairly [deducibale] that he was working in [thier] interest; and therefore the representations made in that letter that are different from that,—I think it is part of the entire transaction of the acquisition of that title, and for that reason, I think it is admissible. In cases of this kind, conspiracy can only be made out by proof of separate acts, one here, and one there.

The Court. What is the date of his entry?

Mr. Youmans. The date of the application is June 1st, 1899. The date of his receipt is August 22nd.

The Court. What does the proof show with reference to this sale of the timber to the Martin-Alexander Lumber Co.?

747 Mr. Youmans: The witness Moran made the statement that Mr. Copeland said to him that he had sold his timber to the company. It was prior to the time they had that conversation, which was April 10th. It was July 6th, or 7th, I believe.

Mr. Hemingway: Of the following year.
Mr. Youmans: Yes sir.
The Court: 1900?
Mr. Youmans: Yes sir. I believe the witness did state that he had signed the note and contract since he came back; and this witness was the only one of the entire number that had refused to do that.
Judge Read: That was Mr. Alexanders statement.
Mr. Youmans: Mr. Copeland was present at the time.
Mr. McRae: The testimony does not show that the witness used Mr. Copelands name. He used Mr. Alexanders name.

Objection sustained.

Noon recess.

1:30 P. M.

Examination of J. R. Neel resumed.

Mr. Youmans: I offer the statement purporting to have been made by Jim P. Copeland, dated October 4th.
Judge Read: Of course that statement goes as against Copeland only, and does not apply to the other defendants.
Mr. Youmans: Yes sir.
The Court: (To the jury) Of course this statement does not prejudice any of the other defendants. It simply goes to
748 Copeland.
Judge Read: To save the point, I object to the statement being admitted at this time for any purpose whatever, because at the time the statement was made, the conspiracy was then over, and because the other defendants could not be prejudiced thereby.
The Court: Upon that ground, the objection is [overrulled]. The statement will be admitted but not to prejudice the other defendants. Only as to Copeland.
Judge Read: We reserve our exceptions, of course.
Mr. Youmans: I will read the statement. (Reading.)

* * * * * * * * *

754 Q. Do you know Mr. Alexander's hand writing? A. Yes sir, I think I would recognize it.
Q. Is the paper I now show you it? A. Yes sir, I think it is.
Q. Is that it? A. Yes sir.

Mr. Youmans: I offer that also.
Judge Read: Subject to same objection?
The Court: This is only evidence against Mr. Alexander, not against Mr. Martin and Mr. Copeland.

Mr. Youmans: I will read it. (Reading.)

* * * * * * * * *

759 Q. How long did John H. Scott live in that community? A. He had been there some two or three years, maybe longer.

Q. Do you know where he came from? A. I think he came from down towards Prescott somewheres.

Q. Thos. J. Clements; how long had he been in that community? A. He came from Arkadelphia.

Q. John H. Wilson; how long had he lived there? A. Only a short time.

Q. Where did he come from? A. Up in the North somewhere. Kansas City or St. Louis, somewhere.

Q. Henry P. Hughes; how long had he been there? A. He had been there some two or three years too.

Q. And Robbie J. Hughes, his wife? A. I don't know much about her. I don't know how long she had been there.

Q. Robertson G. Gregory; how long had he been there? A. Some two or three years.

Q. Where did he come from? A. I rather think he came from Texas there.

Q. He came there to work at the mill? A. He had been working out there. He married down there.

Q. Joseph O. Means; where did he come from? A. Kansas City.

Q. He came there to work at the mill? A. Yes sir.

760 Q. Archibald G. Winslow? A. I don't know where he came from he was perhaps about in the mill.

Q. What did he come there for? A. To work for the Company.

Q. Joseph F. Patterson? A. He had been there about 2 or 3 years, I suppose.

Q. What did he come there for? A. To work for the Company.

Q. Henry M. Lintz? A. I don't know exactly, I think he was there when I first came there—had been 2 or 3 years.

Q. William F. Anderson; how long had he been there? A. He hadn't been there a great while. Something like a year.

Q. What did he come there for? A. To work at the mill.

Q. Henry Jones; how long had he been there—I believe you know him as Harry Jones? A. He hadn't been there a great while. He was book-keeper for the Company.

Q. Emmett S. Keebaugh? A. He had been there for some thing like a year and a half.

Q. What did he come there for? A. To work in the commis-ary and in the office.

Q. Did he go there to do that work? A. Yes sir.

Q. Where did he come from? A. I think it was somewhere near Kansas City.

Q. Chas. W. Fuller? A. He was living there when I
761 went there.

Q. Stephen A. Fuller? A. He was there.

Q. Alvin Pry? A. He came there a little later on.

Q. What did he come there for? A. To work for the Company.

Q. George W. Cooper? A. He hadn't been there more than 6 or 8 months. He came from down near Louisianna.

Q. For what purpose? A. To work for the Company—to run the engine.

Q. E. Y. Fuller? A. He was there when I went there.

Q. Willie Cooper, the wife of George W. Cooper? A. She came there at the same time.

Q. Thos. Roberts? A. Mr. Roberts was there 2 or 3 years.

Q. Did he come to work for the Company? A. Yes sir.

Q. Lawrence C. Horne? A. He had been there for a great while. Some thing like 8 or 10 months.

Q. What did he come for? A. To work for the Company.

Q. William F. Waits? A. He was there some 3 years, perhaps longer. He was there when I went to the place some three or four years ago.

Q. Sherman L. Garrison? A. He had been there some 8 or 10 months.

Q. What for? A. Working for the Company.

762 Q. And Barbery A. Garrison his wife came with him? A. Yes sir.

Q. Jim S. Pennington? A. Mr. Pennington had been there something like a year.

Q. What did he come for? A. In the employ of this Company.

Q. And Jennie V. Pennington—was his wife? A. Yes sir.

Q Chas. M. Mackey? A. He hadn't been there for very long.

Q. What did he come for? A. To work for the Company.

Q. Carrie M. Hicks; how long had she been there? A. Not a great while.

Q. What brought her there? A. She came with her husband, he came there to work for the Company.

Q. Is the signature I show you Mr. Copeland's signature? A. Yes sir I think it is.

Mr. Youmans: We want to introduce this contract in evidence. It is the contract of J. P. Copeland, acknowledged and recorded on the 14th day of April 1900.

The contract was admitted in evidence and is the same contract as the sample contract heretofore introduced, with the exception of names, dates and description of land.

Q. State whether or not you know of the location of the land of Bill B. Copeland? A. Yes sir I know where that land lay. I have been over it a number of times.

763 Mr. Hemingway: It is alleged in the indictment that this is worth $800.00. We object to his proving anything except the $800.00. The indictment fixes the valuation. Objection overruled. Defendants except.

Q. Are you acquainted with the value of land in that locality? A. I am not to say very well posted on land as a general thing I am a little acquainted with it.

Q. You say that you are not acquainted with the value of land in this locality, where Bill D. Copeland's land lay? A. I have an idea.

Q. Do you know what the lands are worth; have you had any transactions? A. I have not had any transaction.

Q. Do you know of any transactions of the sales of land? A. Yes sir—oh yes sir.

Judge Read: I would like to ask the witness a few questions here.

Cross-Examination

By Judge Read:

Q. What business are you engaged in? A. In the Drug Store.

Q. How long have you been in the Drug Store? A. A little while.

Q. Have you bought or sold land? A. I have bought lots.

Q. Have you ever bought any timber land? A. No sir.

Q. What business were you engaged in before the Drug Store? A. In the grocery business.

Q. What before that? A. I was in the employ of the Martin-Alexander Lumber Co.

764 Q. In what capacity? A. I run the barn there and looked after the stock generally.

Direct Examination resumed.

Q. Did you know of timber land being sold? A. Yes sir that is very often the case around there.

Q. And farm lands? A. Not very much farm lands. We have not got much farm land there.

Q. Based upon that information, do you think you know what the values of timber lands are? A. Yes sir I think I do.

The Court: Where did you get your information about the sale of timber land?

The Witness: Just from my observation there. Just what generally would come under any ones observation.

The court: Were you familiar with the land that has been sold?

The witness: I am pretty well familiar with all the land for eight or ten miles around.

The Court: You know of the sale of land that had been made at that time?

The witness: Yes sir.

The Court: You were not buying land yourself?

The Witness: No sir. I was trying to buy with 2 pieces.

The Court: You knew of sales being made?

The Witness: Yes sir.

The Court: You know what it was selling for?

The witness: Yes sir.

The court: I will let him answer the [—]

Mr. Hemingway: How do you know what other lands sold for there?

765 Witness: I heard people say what they got for them.

Mr. Hemingway: You heard people say what they got for them?

Witness: Yes sir and I have offered them some for myself once or twice very small tracts.

Objection overruled.

Q. What in your opinion, was the tract of land belonging ton Bill D. Copeland, worth? A. That was worth a little more than the other tracts around there are worth. That was a very good piece of dirt and the timber was good timber. If you ask the actual value of it, it was worth some thing like $4.00 or $5.00 per acre.

Cross-Examination

By Judge Read:

Q. When did you go to Pike City to live? A. It has been four years ago. It will be five years this coming February.

Q. What was the date as near as you can get at it? A. 1889. It would be five years in February. Substract that from the present and you will get that.

Q. Substract what? A. This date and the back date.

Q. Don't you know when you went there; cannot you tell? A. 1899 I suppose it was—1898 isn't it—

Q. What are you substracting from now? A. I am not substracting. I am just answering the question.

Q. You said awhile ago that if I substracted I could find out what it was. I ask you what you substracted from 1902 or 1903? A. Yes sir.

Q. These people that you spoke of come there at different times? A. Yes sir.

Q. You have nothing to refresh your memory about it re-

cently as to when they came? A. I don't know as I have.

766 Q. That is just your estimate of the time? A. Yes sir.

Q. It might have been longer, or it might have been shorter? A. I don't think I was very much off—as to whether it was very much either way or not.

Q. You are just giving your general idea about when they come; most of these people are there now? A. No sir not most of them hain't. A great many of them are.

Q. How long has it been since they left? A. I don't know.

Q. Why not? A. They come and go so much there, that I don't know.

Q. What I want to get at is, these people, the majority of them, stayed there until the mill would be shut down, wouldn't they? A. Yes sir until before the last sale was made. There was a good many left about that time. When Mr. Alexander went out.

Q. That was along in 1901 wasn't it? A. Yes sir.

Q. But they stayed there a longer time after these entries were made? A. Some of them did and some didn't.

Q. The majority of them? A. Yes sir.

Q. The majority are there yet? A. Yes sir I think so. A large majority.

Q. Some stayed until the mill was shut down and then they went? A. And some of them are still there now.

767 Q. You worked at the Martin-Alexander Lumber Company, hain't you mistaken about that; did you work there after Mr. Martin came down there? A. Yes sir, the Alexander-Hall Lumber Company was the style of the firm when I first went up there.

Q. Did you work for the Martin-Alexander Lumber Company at all? A. Yes sir.

Q. How long? A. Only a short time. Two or three months, or four maybe.

And further the witness saith not.

Mr. U. L. Clark, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Q. Your name is U. L. Clark? A. Yes sir.

Q. You are connected with the Detroit Timber and Lumber Company? A. Yes sir.

Q. Where is that Company located? A. St. Louis.

Q. Has it a plant at Pike City, Arkansas? A. Not at the present time.

Q. You did have one there, didn't you? A. Yes sir.

Q. I believe it has been stated that the Detroit Timber and Lumber Company bought out the Martin-Alexander Lumber Company? A. Yes sir.

Q. Did you conduct the negotiations? A. Yes sir.

768 Q. There were certain timber contracts made to the Martin-Alexander Lumber Co.: state whether they were purchased by the Detroit Timber & Lumber Co. A. Yes sir. They were.

Q. Do you remember how many there were? A. No sir. I don't remember just how many there were.

Q. I will show you some papers and ask you if those were among the number. A. Yes sir. I think I gave you 18 or 19 when I came here. There are only 17 here.

Judge Read: Have you not one here?

Mr. Youmans: That is more. That makes 18.

The Witness: There are 18 or 19. I forget which, that I gave you.

Q. 18 here? A. Yes sir.

Q. Were there any more? A. Yes sir. There were quite a number of other contracts and deeds.

Q. I am asking you about the contracts. A. There were other contracts.

Q. What has become of them? A. All these relating to the lands in dispute were returned from St. Louis to our woodsman at Pike City,—to the parties from whom we got fee simple deeds to the land.

Q. You got deeds for the lands covered by these contracts? A. Yes sir.

Q. Where are those deeds? A. I turned them over to Mr. McRae. I suppose he has them now.

Q. I wish you would look over the number of deeds now shown you,—those deeds that were taken, and the contracts surrendered. A. Have you got them all here, the way

769 I gave them to you? they have all been surrendered except Mr. Mackey's, I think.

The Court: What is the object of this?

Mr. Youmans: One object is to identify the lands, all the contracts are not here. I know of no other way to identify the land in the contracts except to show by the deeds.

Judge Read: If those contracts are in the possession of the other witnesses, they ought to be subpoenaed to bring them here. We object.

Mr. Youmans: You have all these deeds have you?

The Witness: Yes sir, there is a contract for the Mackey and the Davis deeds.

Q. These contracts, you say, most of them, were delivered to the makers of the deeds? A. Yes sir I expect so. I sent them to our Woodsman, Mr. McDonald.

Mr. Youmans: I ask to introduce these deeds for the purpose of identifying the land in the indictment.

Deeds objected to as incompetent and immaterial.

Mr. Youmans: I want to follow up the transaction and show that each one of these contracts have been surrendered for that purpose; and to show by Mr. Clark's testimony that those contracts contain the same description he had in his deeds.

The Court: What is the object of that if it is conceded that you have shown by the proof that the lands mentioned in the indictment are the lands taken up. It does not make any difference what became of the land.

Mr. Youmans: Here are 6 deeds as follows: Martha Gregory, dated the 12" of April 1900; J. O. Means, dated the 10th of September 1900; John H. Wilson, dated the 12th of
770 April 1900; J. H. Scott dated the 13th of April 1900; Barbery A. Garrison, dated the 9th of June 1900; and Sherman L. Garrison, dated the 9th of June 1900, here is also one of C. M. Mackey that is neither recorded or acknowledged. I desire to offer that in evidence. Is there any objection. It is dated the 10th of September 1900.

These deeds are covered by the agreement concerning the list of deeds attached to the testimony of this witness when he testified in the case of the United States VS. the Detroit Timber and lumber Company, and will be found included therein.

Q. You have since purchased some of the land up in that country covered by these contracts? A. Yes sir.

Q. What are the valuations of these lands you purchased under these contracts?

Objection renewed. Overruled. Defendants excepts.

A. Well, at the time that [they] Detroit Timber & Lumber Company bought it there, I did not like these timber contracts.—

Q. I am asking you for the valuation of these lands? A. I consider that the value was what we had to pay for them.

Q. What was that? A. We paid all the way from $25.00 to $80.00.

Q. The contract? A. Yes sir. I wanted to buy the land cheap as we could. In addition, when we took these the ac-

count showed on the books how much was advanced on these timber contracts. I wanted to get a fee simple deed and I sent to our man to buy the land if he could at as reasonable price as he could to get a fee simple deed; and he made the best price he could.

771 Q. And the amount specified in the contract, of $25.00 to $80,00, would be the value of each contract? A. What ever it showed on the books.

Q. What do you mean by the books? A. I mean by that statement, our books.

Q. This (indicating) is one of your books—what book is that? A. That is the ledger that was in use by the Martin-Alexander Lumber Company in January 1901.

Q. That book was transfer-ed to the Detroit Timber and Lumber Company, was it? A. These contracts were; yes sir.

Q. Take for instance the first—

Judge Read: We want to raise an objection. State your object.

Mr. Youmans: Simply to get at the valuations of the lands

Judge Read: No other purpose than to show what was paid for the land?

Mr. Youmans: That is all for the present. That is simply to refresh his recollection.

Judge Read: An additional ground of objection is that these directions all occur after the alleged conspiracy took place, and we are not bound by them. These are the books of the Martin-Alexander Lumber Company: and besides that, the transaction took place after the alleged conspiracy.

Mr. Youmans: I think Judge Read misunderstands me. I am simply asking Mr. Clark with reference to the value of these separate tracts of land. He says that they were worth from $25.00 to $80.00, in addition to whatever amount appears upon the books. Simply to enable him to get at the valuation of each [peice], I am asking him to refresh his recollection by reference to the books. I take it he does not remember the amount.

772 The Court: I think you had better not do that. You would get error into your record.

Mr. Youmans. Very well.

Cross-Examination

By Judge Read:

Q. What time did you buy out the Martin-Alexander Lumber Company? A. January 14th 1901.

And further the witness saith not.

L. E. Rowe, a witness called for the Government being first duly sworn testifies as follows:

Direct Examination

By Mr. Youmans:

Q. What is your name? A. L. E. Rowe.

Q. Where do you reside? A. Pike City.

Q. What were you engaged in in the winter of 1889 and 1900? A. I was bookkeeper for the Martin-Alexander Lumber Company.

Q. Do you know anything about certain timber contracts that were executed to the Martin-Alexander Lumber Company? A. Yes sir, I knew of the entries.

Q. On the books? A. Yes sir.

Mr. Youmans: If the Court pleases, there are entries in that book with reference to this matter that I want to ask the bookkeeper here to explain and show what they meant. (to the witness)

Q. Turn to these accounts. I will ask you first what book that is? A. It is the ledger that I used after July 1st 1900.

Q. For the Martin-Alexander Lumber Company? A. Yes sir.

773 Mr. Youmans: We offer to introduce [thses] books.

The Court: Were those books that were kept contemporaneously with the entries of these amounts?

The Witness: Yes sir.

The Court: Kept by you?

The Witness: Yes sir.

The Court: And kept correctly?

The Witness: Yes sir.

The Court: And the entries entered from day to day?

The Witness: Yes sir.

Judge Read: You say these books were kept contemporaneously with the purchase of this land?

The Witness: Yes sir.

Q. When was that book opened? A. This book was opened the first day of July 1900. This is the new ledger. The other accounts were all transfer-ed from the old ledger to this.

Judge Read: That book was not the original book that was kept?

The Witness: It is the original entry so far as this book is concerned. It is not the identical book.

Judge Read: The last purchase of land as shown by the [inditement] was made on the 1t5h day of June 1900.

The Court: Is that true?

Judge Read: He said it was July 1900. We object to it on the ground that it is immaterial for two reasons; and that the book was made up after any conspiracy, or any act under the

alleged conspiracy, had been performed. That is in the book of original entries. The ledger is not the book of original entries. The entries are posted from some other book, or
774 from some other blotter or something that is copied into the ledger. The ledger is not the book of original entries.

Mr. Youmans: That is not the book of original entry, and it has been impossible for us to find where the books are. A subpoena Duces tecum was served on Mr. Clark to produce all those books. He says that that is all he has.

Mr. McRae: When were the books acquired from the Martin-Alexander Lumber Company?

A. On the 14th of Jaunary 1901.

The Court: Those are the books in use by the Martin-Alexander Lumber Company at the time they sold out to the other Company?

The Witness: Yes sir.

Mr. Youmans. I will ask you if those are all the books you have?

Mr. Clark: Yes sir.

Mr. Youmans: All those you got?

Mr. Clark: Yes sir.

The Court: When were these books closed; did you stay with the Martin-Alexander Lumber Company until they were closed?

The Witness: Yes sir.

The Court: When were these books closed?

The Witness: They were in use at that time.

The Court: What time?

The Witness: The time I left the employ of the Company. This book here is simply a ledger. They would use this number 2 ledger after this number 1 became full; and all the accounts were not closed in Number 1 Ledger and those that were not closed were transfer-ed to this as a balance and closed afterwards; and I think this book was still in use when I left the Detroit Timber and Lumber Company.

775 Mr. Youmans. Your ledger shows charges and credits on account of the stumpage and those books were kept by you for that Company?

The Witness: Yes sir.

The Court: What officers did the Company have?

The Witness: Mr. Martin was President and Mr. Alexander was Secretary.

The Court: I don't know precisely what you want the testimony in for?

Mr. Hemingway: Is that the book of original entry or any part of it?

The Witness: In the case of cash, it would be the cashbook and in the case of notes and other accounts, the other book would be the Journal.

Q. In the case [od] stumpage, what would be? A. The Journal.

Q. Was there not a book kept by the timber boss from which the original entries were made? A. No sir.

Q. Where did you get the entries which went upon the Journal? A. The original stumpage account?

Q. Yes sir. A. It was dictated to me personally.

Q. I don't mean the contract; it stated these accounts showed the amount of timber cut? A. Yes sir.

Q. And the entries in this book came from the Journal, you say? A. Yes sir.

Q. Where did you get the information from which you made the entries in the Journal? A. From the slip handed
776 in by the log skillor.

Q. How often was that handed in? A. Once a week.

Q. What shape was that in? A. Simply a long slip of paper that showed the amount of logs hauled and cut and the [peices] of land that the timber came off and designated the number of feet.

Q. That was handed in once a week? A. Yes sir.

Q. What was done with that? A. It was posted on the timber Journal that was kept.

Q. Was that the first book? A. Yes sir.

Q. That was usually called the log book was it not? A. Yes sir.

Q. That was the first book in which it was made? A. Yes sir.

Q. What was the next book? A. The money that the entry represented in feet, was transfer-ed to the regular journal of the Company.

Q. Then from the journal to the ledger? A. Yes sir posted from there to the ledger.

Mr. Youmans. I want to get at the stumpage account of E. E. Lintz, designated as contract number 29.

The Court: That is to show how much timber came off the place?

Mr. Youmans: To show the entry made on the book with reference to the stumpage account; in explaining the transaction between the parties.

The Court examines books.

The Court: Do you know what time this ledger was opened?

777 Witness: July 1st 1900.

The Court: These entries all begun July 1st 1900?

Witness: The 1st entry is a balance that was posted from the first ledger. That is the reason they all date from July 1st.

Mr. Youmans: I will ask the witness also, what his memory is with regard to the date of these original entries?

The Court: I believe I will let the testimony go.

Judge Read: For what purpose does it go to the Jury?

The Court: For every purpose that is there.

Judge Read: Do you mean that each [accounts] may go to the District Attorney for any purpose he sees fit to use it?

The Court: It does not point out Mr. Copeland. These other men were in the employ of the Company; and the land was bought by the Company. I rather think it is competent.

The defendants excepts.

Q. Take that account right there, page 704, account of E. E. Lintz, contract number 29; what does that mean? A. That means that that is the account kept by the Company of the stumpage to be accounted for on that one piece of land covered by that contract number 29.

Q. Of Emma E. Lintz? A. Yes sir it is that there.

Q. What is that first entry there? A. "Balance brought forward from ledger Number 1."

Q. What is the amount of it? A. $199.15.

Q. What does that entry mean? A It means that there was that much I debited on the account by timber.

Q. Explain it in plain English. A. I will have to
778 go pretty well into it to explain it fully.

Q. It is not worth while unles- the other people insist. A. This account originally has a larger amount in money on the debit side, certain entries had been made on account of stumpage credit to it that cut it down and that is the amount left, $199.15.

Q. What do you mean by stumpage? A. I mean on account of timber by the 1000.

The Court: Lintz owed a large amount of money and stumpage cut it down until he owed that.

The Witness: Yes sir.

Q. The Lintz contract owed that; did Lintz as an individual owe it? A. No sir.

Q. Explain how it was that Emma Lintz owed that? A. I will explain that as I understand it.

Q. Is that an individual account or a contract account? A. It is a contract account.

Q. E. E. Lintz contract number 29, was charged with that amount of money? A. Yes sir.

Q. The amount of money was larger on a previous date; but it was carried forward until it was that amount? A. Yes sir.

Q. What does that entry below there, October 25th mean?

A. That entry was a portion of the account headed "Improvement" account. $27.25 of it was charged to E. E. Lintz account number 29.

Q. Did you know what that was? A. Yes sir. I don't know that I am positive about it.

Q. Did you get any information from either Mr. Martin or Mr. Alexander as to what it was?

The Court: Gentlemen you understand that the testimony on these books does not bind Mr. Copeland at all, it relates to the other two only.

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The Witness: Yes sir I did.

Q. What was it? A. From Mr. Martin that that was the expense that the "Improvement account covered, the expense incurred in entering the land.

Q. Is that all he told you? A. Yes sir.

Q. What did he say; how were they incurred in entering the land? A. He did not explain to me.

Q. He just said they were incurred in entering the land? A. Yes sir.

Q. Do you know what that item of 50 cents is there? A. I think that is a cash item of a Notary Public fee.

Q. Did you have any information from either Mr. Martin or Mr. Alexander as to what that was for? A. No sir.

Q. What is that entry on the credit side? A. On the credit side the entry is closing the account to the St. Louis office of the Detroit Timber and Lumber Company.

Q. Do you know how the first original entry was made on which that $199.15 is the balance? A. Yes sir.

Q. What was that? A. The first entry was the cash entry—

Objected to because the witness is testifying to what is in other books.

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The Court: Did you make entries in the other book? A. Yes sir.

Q. Where did you get the information from where to make them? A. I would have to tell you what the first entry was to tell you how I got the information. The first entry was a check and I got the information from the stub of the check pasted in the book.

780

The Court: He may testify. Let the objection be overruled. The defendants except.

Q. Do you know what the check was for? A. No sir.

Q. Did you get any information from Mr. Martin or Mr. Alexander with reference to that check? A. No sir.

Q. The Court: Where did you get the check book? A. I kept it.

Q. Who filled this out? A. I did.

Q. Who directed you to fill it out? A. Mr. Martin.

Q. Do you know to whom that check was payable? A. I cannot say concerning that particular check. Some times checks were made payable to the German National Bank at Little Rock.

Q. How was that item of the check entered on the books? A. Posted immediately from the stub of the check book to the cash.

Q. And from there to where? A. From there to the ledger.

Q. Go ahead? A. To what account posted?

Q. Yes sir. A. To bills receivable.

Q. And from bills receivable where was it carried? A. There was a contra entry against it in the stumpage account.

781 Q. Explain to the Jury what "Bills Receivable" mean? A. Bills receivable, is a note or other paper—an obligation due the Company. Is that sufficient?

Q. Due the Martin-Alexander Lumber Company? A. Yes, sir.

Q. What's this next account here on page 704? A. H. M. Lintz, contract Number 31.

Mr. Hemingway: It is understood that we object to each one of those.

The Court: The interrogations as to those books, are all excepted to.

Mr. Hemingway: Each and every item.

Mr. Youmans: Yes, sir.

Q. What is that first item? A. A balance from ledger Number one, under date July 1st, 1901.

Q. How did it get into ledger number one? A. It was posted in there from the Journal.

Q. Did you have any information from Mr. Alexander or Mr. Martin as to what that consisted of? A. That amount of money, do you mean?

Q. Yes, sir. A. Only that I got my information as to how to make the entry and to make the entry.

Q. From whom? A. Mr. Martin.

Q. The next item here is October 25th, 1900, $27.25, what is that? A. A portion of this Improvement account.

Q. What did it consist of? A. Expenses.

Q. For what? A. Expenses incurred in entering
782 the land.

Q. Just like the one in the preceding account? A. Yes, sir.

Q. The next on page 704, is B. A. Copeland's account, number 30, the first entry is what? A. July 1st, 1900 balance from ledger number 1 $400.00.

Q. The next item, October 25th, $27.25, what is that? A. A portion of the Improvement account.

Q. That consists of expenses in making those entries, just like the other ones? A. Yes, sir.

Q. On page 705, is R. C. Gregory, contract number 16; the first item is what? A. July 1st, 1900, balance from ledger number 1, $407.90.

Q. The second item is October 25th? A. $27.25.

Q. What did that consist of? A. A portion of that Improvement account.

Q. And was for? A. Expenses.

Q. In making entries? A. Yes, sir.

Q. You got that information from Mr. Martin, did you? A. Yes, sir.

Q. On the same page, 705 is Martha Gregory's account, contract number 17; what is the first item? A. July 1st., 1900, balance from ledger number 1.

Q. The item of October 25th? A. $27.25. A portion of the Improvement account.

Q. So that there were similar entries in those other accounts for the expense of making entries? A. Yes, sir.

783 Q. On the same page 705, John H. Wilson, contract number 18; what is the 1st item? A. July 1st, 1900 balance from ledger number 1, $396.30.

Q. What is the next? A. Error of T. J. C., debited $20.85.

Q. October 25th, what is that? A. $27.25 part of the Improvement account.

Q. That was expenses in making the entries? A. Yes, sir.

Q. What are these items over on this side? A. The credit side. That was the credit by stumpage cut off of that land.

Q. Covered by contract number 18? A. Yes, sir.

Q. Those are different items? A. Yes, sir.

The Court: Is there any necessity to go through all those accounts?

Mr. Youmans: I want to offer every one of them and have him explain them.

Q. Were they all kept in that way? A. All those contracts that had a number were kept that way, yes, sir.

Q. Mr. Youmans: I don't want to introduce any one except in where the testimony has shown a contract has been executed in this timber transaction.

Q. Take the three accounts on number 706. R. J. Hughes, contract number 19; Jim B. Copeland contract number 20; T. J. Clements contract number 21; each one of them contains, in addition to the first item, an item of $27.25 under date October 25th? A. Yes, sir.

784 Q. Those items were from the Improvement account and were for expenses in making entry? A. Yes, sir.

Q. John H. Scott, A. J. Winslow, contract number 23, Emma Winslow, contract number 24, have the first items there entered October 25th, of $27.25? A. Yes, sir.

Q. All those were taken from the Improvement account and were for expenses in making entries? A. Yes, sir.

Q. On page 708, J. O. Means, contract 25, Caroline H. Means, contract 26, J. H. Patterson contract 27; there are the same entries under October 25th and July 1st, except that the October entry is for $27.25. A. Yes, sir.

Q. On page 710 Henry Jones stumpage account number 26? A. 36.

Q. Excuse me. W. F. Anderson contract number 36, Gus. G. Copeland contract number 37, they are charged with the same sum under July 1st, $400.00 each, and in October, $27.25 each? A. Yes, sir.

Q. And there is $27.25 in each instance from the Improvement account for expense in making entry? A. Yes, sir.

Q. Page 711, Rosa L. Anderson, contract number 34, George F. Colston, contract number 38. In those two accounts entered July 1st, you have $200.00 in one case and $300.00 in the other and under October 25th, $27.25 in each instance? A. Yes, sir.

Q. And those two items are for the same thing; taken from the Improvement account and for expenses? A. Yes, sir

785 Q. E. S. Keebough, Page 712 contract 42, you have two entries there likewise; July 1st, $400.00 and October 25th, $27.25? A. Yes sir.

Q. Page 713, C. W. Fuller, contract 43, B. F. Patterson contract 44, Henry P. Hughes contract 45. In the Fuller account under date of July 1st., there is $400.00 and October 25th, $27.25? A. Yes sir.

Q. And similar ones in the other two? A. Yes sir.

Q. And similar entries for $27.25? A. Yes sir.

Q. Those last mentioned entries were taken from the Improvement account? A. Yes sir.

Q. And were for expenses for making entries? A. Yes sir.

Q. On page 714, Mittie C. Roberts contract number 46, Thomas C. Roberts contract number 47, Alvin Pry contract number 48. In Mittie C. Robert's contract under date of July 1st, is a charge of $400.00, and the Thomas C. Roberts account

has a charge of $300.00 and the Alvin Pry account has a charge of $200.00, and in each one, under October 25th, is a charge of $27.25; that was taken from the Improvement account, as a charge for expenses in making entries? A. Yes sir.

Q. Page 715, E. Y. Fuller contract number 49, Charles Fuller contract 50, George W. Cooper contract number 52; is there any portion of that first one of E. Y. Fuller contract number 49, that you did not enter? A. Yes sir.

Q. What part of that is not there? A. All that
786 after October 25th 1900.

Q. The items prior to that you entered did you? A. Yes sir.

Q. The first one is an item of $400.00 and the second one of October 25th, is an item of $27.25? A. Yes sir.

Q. And there are similar items under the same dates in the other two contracts, S. A. Fuller and George W. Cooper? A. Yes sir.

Q. There $27.25 items are from the Improvement account and were for expenses for making entries. A. From the Improvement account.

Q. Page 716 Willie Cooper contract number 53 H. F. Waits contract 54 B. A. Garrison contract 55, each one of those accounts has an entry under July 1st of $400.00 and each one has an entry under October 25th of $27.25? A. Yes sir.

Q. 1900? A. Yes sir.

Q. The $27.25 was from the Improvement account and was for making entries? A. Yes sir.

Q. The expenses in making the entries? A. Yes sir.

Q. Page 717, T. L. Garrison, contract 56 L. C. Horne contract 57, Charles W. Davis, contract 58; there are those two items are there not, charged in each one of those accounts? A. Yes sir.

Q. And the first is under date of July 1st. $400.00? A. Yes sir.

Q. There are just two items are there not, charged
787 in each of those accounts? A. Yes sir.

Q. The second is October 25th, $27.25? A. Yes sir.

Q. And the items of $27.25 in each case was from the Improvement account and was for the expenses in making the entries? A. Yes sir.

Q. Page 718 Mary E. Davis contract 59. The first item there is of July 7th, is it not? A. Yes sir.

Q. To bills receivable, $400.00? A. Yes sir.

Q. And October 25th, $27.25? A. Yes sir.

Q. That was from the Improvement account for the expenses in making entries? A. The last items, yes sir.

Q. Now on page 719 there is an account against William E. Dorsey? A. Yes sir.

Q. No mention of a contract or anything of that kind? A. No sir.

Q. What is the charge for? A. The first charge is Agust, 1st, $400.00.

Q. What year is that? A. 1900.

Q. The next? A. August, 8th, $18.00. Sept. 1st, $7.75. April 12" $80.00 "paid through Pennix"

Judge Read: There is an entry here that the book-keeper says was made after the sale of the Detroit Timber and
788 Lumber Company in this particular account; and we object to that.

Mr. Hemingway: We object to every thing that has gone in.

The Court: They could not be bound by that.

Mr. Youmans: I will not ask that that separate item be introduced.

Mr. Hemingway: I call your Honors attention distinctly to the entry in the first account which was transcribed on the books of this Company. That was some months after the purchase by the Detroit Timber and Lumber Company.

The Court: I understand all those entries were made with the Detroit Timber and Lumber Company, that you have testified to.

The witness: This one and one of the credit items I mentioned awhile ago were made by the Detroit Timber and Lumber Company.

The Court: Is there not an entry made in every account that you have testified about?

The witness: Not that I have testified to.

Q. Are there not entries made in every account, made by the Detroit Timber and Lumber Company? A. Yes sir.

The Court: Are there in all of them?

The witness: One of them I did, I think in the first account. They asked me what that account in the case of E. E. Lintz [me] meant. The item is April 3, 1901. St. Louis $226.90. That was entered by the Detroit Timber and Lumber Company.

The Court: Then it is excluded.

Judge Read: In all those matters you are simply taking the debit side of the ledger.

Mr. Youmans: Yes sir. In the Bill Dorsey account I want to introduce only the first three which the book-keeper says were entries made by him as book-keeper for the Martin-Alexander Lumber Company.

789 The Witness: Yes sir.

The Court: Did you offer any other of those entries before?

Mr. Youmans: Yes sir I did.

The Court: What did you offer?

Mr. Youmans: April 12th paid through Pennix. $80.00. I will not ask any more there.

The Court: That is an entry of the Detroit Timber and Lumber Company?

The Witness: Yes sir.

The Court: It is excluded.

Q. E. J. Moran, page 719. Give all the items charged there that were made by the Martin-Alexander Lumber Company? A. August 1st, 1900, $400.00. August 8th 1900, $18.00. September 1st $7.75.

Q. On page 720 of S. Z. Moran, give all the items in that account that were made by the Martin-Alexander Lumber Company. A. August 1st 1900, $400.00. August 8th 1900 $18.00. Sept. 1st $7.75.

The Court: Are those entries that you have gone over already?

Mr. Youmans: No sir.

Q. On page 720 J. S. Pennington, contract number 65 and Jennie V. Pennington, stumpage contract number 66; there are two items of charge in each case are there not? A. Yes sir.

Q. And the first items in each account is entered under date of September 14th? A. Yes sir.

790 Q. What year? A. 1900.

Q. And under date of October 25th, is an item of $27.25 in each of those last two accounts? A. Yes sir.

Q. What were those $27.25 items? A. From the Improvement account.

Q. What were they for? A. Expenses in entering the land.

Q. On page 721, Carrie M. Hicks, stumpage contract number 67, C. M. Mackey stumpage contract number 68, J. D. Copeland stumpage; in the first two, Hicks and Mackey accounts, there are two items of charge in each one? A. Yes sir.

Q. The first under date of September 14th of what year? A. 1900.

Q. How much? A. $400.00.

Q. In the Mackey account the same date? A. $400.00.

Q. Is that 1900? A. Yes sir.

Q. Under date of October 25th, there is an item of $27.25? A. Yes sir.

Q. What is that? A. Part of the Improvement account.

Q. What for? A. For expenses incurred in entering the land.

Q. Are they all of those stumpage accounts? A. Yes sir, all that had not been closed out before that book was opened.

Q. Some had been closed out? A. I don't know
791 that they had.

Q. Is that all that you know anything about? A. Yes sir.

Q. Did you have any conversation either with Mr. Martin or Mr. Alexander in regard to this transaction? A. No sir.

Q. Did you make any entry under the direction of Mr. Martin? A. I made all those entries under the direction of Mr. Martin.

Q. Did he give you any explanation as to what they were there for other than what you have stated? A. No sir.

Q. Did he give you any explanation of any other item entered in any other books? A. Do you mean general items?

Q. Yes sir. A. When he thought it was necessary.

Q. I mean with reference to these stumpage accounts on these contracts? A. Do you mean that he gave me any directions about entries, or simply directed me to make the entries?

Q. Without explaining what they were for? A. Yes sir, he explained what they were for.

Q. Did you know of the existence of these contracts that I now show you? A. Yes sir.

Q. How many were there? A. I could not say.

Q. Where were they? A. When I saw them they were in Mr. Martin's desk.

Q. Was there anything attached to them? A. Yes sir, there was a note attached to them.

792 Q. To each one? A. Yes sir.

Q. Do you know what became of those notes? A. No sir.

Q. You severed your connection with the concern when? A. August 1st 1901.

Q. I am talking about the Martin-Alexander Lumber Company. A. On the 14th day of January, 1901.

Q. Where were those contracts then, if you know? A. I don't know.

Q. When was the last time you saw them? A. The last time I saw the contracts to know they were those contracts, they were in Mr. Martin's hands. I might have seen a bundle of papers.

Q. When? A. When I made the entry on the Journal.

Q. Did you see them at any other time? A. No sir.

Q. Were the notes attached? A. Yes sir.

The Court: Were the notes cancelled?

The Witness: Yes sir.

The Court: The notes were cancel-ed?

The Witness: All that I saw were cancelled.

Q. Do you know of any trips made to Camden by Mr. Copeland? A. Yes sir.

Q. What about the expenses on those trips, if there were any? A. They were charged to the Improvement account.

Q. By whose directions? A. I say I know he went to Camden; I don't know that he went to Camden, because I didn't follow him, but I know he turned in his expense account
793 for the trip to Camden.

Q. More than one? A. Yes sir.

Q. You heard from him whether he went to Camden or not? A. Yes sir.

Q. What did he say with reference to that? A. He didn't say anything.

Q. He just turned in the expense account? A. Yes sir.

Q. What did you do with it? A. I charged it up to the Improvement account.

The Court: To whom?

The Witness: The account I have before testified about.

The Court: Supposing he went with a half dozen different parties; you then did what?

The Witness: It was all charged to this one account;—the account headed Improvement account.

The Court: The account kept by the Martin-Alexander Lumber Company?

The Witness: Yes sir, headed Improvement account.

Q. And these items of expense were entered in there? A. Yes sir.

Q. And charged to that account? A. Yes sir.

The Court: Were they also charged to the parties who get the land?

The Witness: Afterwards they were.

Q. How do you mean that? A. I mean, where these entries of $27.25 that I have testified about, were a part of that grand total in the Improvement account.

Q. They were averaged were they? A. Yes sir.

794 Q. And they were charged in this account to J. S. Pennington, contract number 3? A. Yes sir, certainly $27.25 was charged to the Pennington contract number 65 and credited to the Improvement account.

Q. You say they were averaged and charged that way? A. As I understood they were made up of a certain amount of money, Railroad fare, a certain amount for hotel bill.

Q. How does it happen that each one is $27.25? A. I could not say.

Q. Who told you to do it that way? A. Mr. Martin.

Cross-Examination

By Judge Read:

Q. Do you know where these contracts that you refer to were kept? A. I know that in the safe was a lot of large envelopes that were labeled on the end "stumpage contracts."

Q. Were there not a lot of them kept in Mr. Alexander's drawer there, don't you know that? A. I don't know.

Q. You did see them in the safe? A. I saw these large packages in the safe numerous times.

Q. They had a lot of stumpage contracts with other parties other than those that are acquired under the Timber and Stone Act? A. Yes sir.

Q. Do you know whether they were kept together or not? A. I think they were. I don't know positively.

Q. Mr. Martin did not live there, did he? A. No sir.

Q. How often was he there? A. Usually about once a month.

795 Q. And he was away a great deal of the time? A. Yes sir.

Q. When he came down there these matters were then entered up, were they? A. Yes sir.

Q. The reason they were not entered before was because Mr. Martin was not there? A. Yes sir. I made no entry of them unless Mr. Martin told me to. Of course he could not have told me if he was not there.

Q. When he was giving you directions to enter up items, for instance, $400.00 there, he had the contract and note in his hand? A. Yes sir.

Q. The note was marked "cancelled"; I believe you stated that? A. Yes sir.

Questions by Judge Hemingway.

Q. Mr. Rowe, I understood you to say that these were not account kept with the individuals but with the contracts; is that correct? A. Yes sir.

Q. And supposing that the Martin-Alexander Lumber Company had advanced to these people the sum of $400.00 and then these items of expense and had purchased their timber under a contract to pay them 50 cents a 1000 for the timber as it was cut; would not the account be kept just as those accounts are kept? A. Yes sir.

Q. So that these people owed the Martin-Alexander Lumber Company the amount of money charged in those accounts and the Martin-Alexander Lumber Company owed for the timber the amount deducted for timber the accounts would be kept just as these have been kept? A. Yes sir.

796 Q. Was not this account kept in this way; when the amount was advanced to these parties to purchase the

land and pay their expenses in purchasing the land it should not be charged in the general personal account, but should be paid out of the timber as it was cut. A. Yes sir.

Q. It would be paid out of the proceeds of the timber? A. Yes sir.

Q. If these amounts had been charged in their general personal account, then they would have been payable when ever the general personal account was due? A. Yes sir.

Q. So unless the amount advanced for purchasing the land and advanced for the costs incurred in purchasing the land—for that reason a separate account with the contract account was opened? A. Yes sir.

Questions by Mr. Youmans:

Q. You have stated that these were not charged in the general personal account; was there any general personal accounts of the individuals whose names have been read? A. Some few of them.

Q. What few of them? A. Henry M. Lintz, T. J. Clements, James P. Copeland, is all that I can remember now that had a personal account in addition to this stumpage account.

By Judge Hemingway:

Q. Mr. Waits had a personal account, didn't he? A. Yes, sir.

Q. And there might have been a number of others who had personal accounts? A. There might have been: I cannot say positively at this time.

797 Q. A number of them, in fact, had personal accounts in the store that they carried in the form of credit checks. A. I did not keep those accounts. I know that a great many men were working there and got paid off with credit checks.

Mr. Youmans: The books would show, would they not?

The Witness: The pay-roll would.

Mr. Youmans: The books would show all those amounts?

The Witness: Yes sir.

Mr. Youmans: I don't mean these books, but the books of the concern, other than these books?

The Witness: Yes sir.

Mr. McRae: Wasn't it one of the purposes in having pay checks to avoid book keeping?

The Witness: Yes sir. I expect the object of paying by checks, was to avoid keeping an account with each individual.

Mr. Hemingway: So that for that reason, every body did not have a book account?

The Witness: No sir.

Mr. Youmans: What are these checks issued for?

The Witness. To be used in trading in the store.

Mr. Youmans: They were issued for labor performed?
The Witness: Yes sir.
And further the witness saith not.

798 Frank Buck, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Q. What is your name? A. Frank Buck.

Q. Where do you live? A. Pike City, Pike County.

Q. Do you know J. P. Copeland? A. Yes. sir.

Q. And Mr. Martin here, and Mr. Alexander? A. Oh yes sir.

Q. State whether or not you had any conversation with either of these gentlemen with regard to entering land under the Timber and Stone Act in Pike County. A. I don't know that I had very much of a conversation. I proposed to one of them I would take up some land.

Q. Do you remember which one? A. I could not say. I proposed that I would take up some.

Q. Where was it when the proposition was made? A. I could not exactly say. It seems to me like it was in front of the post office, on the street.

Q. You don't remember who it was? A. I could not say, for sure, who it was. I thought I might take up some land. It was Mr. Copeland, or Mr. Alexander.

Q. Don't you recall that the other day you told me it was Mr. Copeland? A. I have figured about that since you were speaking to me. I don't believe I could scarcely convince my mind which one.

Q. Do you remember what the conversation was? A. Nothing except I told them this; that if they wanted anybody else to take up this Timber and Stone land, I would take up some, also my wife.

799 Q. What was the reply? A. It strikes me that they said they did not need anybody at present.

Q. Was that all that was said? A. That is about all.

Cross-Examination

By Judge Read:

Q. Do you remember the exact words used by them? A. It strikes me that they did not need nothing of that kind at present.

Q. You don't undertake to repeat their language in words? A. Not every word, because I neve. thought nothing of it at the time.

Q. You just proposed to them to take up some land at that time? A. Yes sir.

Q. Told them that you were willing to do so? A. Yes sir.

Q. They said to you they did not want anybody? A. They did not need anybody.

Q. You don't remember the words they used do you? A. No sir; and they did not want anybody. It was something to that effect. I don't know that that was the words.

Mr. Youmans: You don't remember it?

The Witness: I know that I had my mind made up, and went and made a proposition.

Mr. Youmans: I mean the language that was used: you don't remember it?

The Witness: I don't remember exactly the words. I don't know whether they said they did not need anybody, or did not want anybody. That is the substance of the thing; and I did not take up any.

And further the witness saith not.

800 R. E. Ebbs, a witness called for the Government, being first duly sworn, testified as follows:

Direct Examination

By Mr. Youmans:

Q. What is your name? A. Ebbs.

Q. Where do you live? A. Gurdon.

Q. Did you live at Pike City at any time during 1899 or 1900? A. Yes sir.

Q. What were you doing there? A. I worked for the Martin-Alexander Lumber Co.

Q. State whether or not you made an application to enter public lands in Pike Co? A. I did.

Q. How did you come to do that: what brought the matter to your attention? A. Mr. Copeland spoke to me about it.

Q. What did he say? A. He came to me and t-ld me that he wanted me to enter for some lands.

Q. Where were you? A. I was in the shop. In the mill shop.

Q. You did the blacksmithing for the Martin-Alexander Lumber Co? A. Yes sir.

Q. What did he say to you? A. He told me he wanted me to go out and look at some land and make an entry.

Q. What did you do? A. I went to look at the lands.

Q. Who was with you? A. Mr. Copeland, Mr. Keebaugh and Mr. Fuller, and some others, I don't remember.

801 Q. Was Mr. Copeland with you? A. Yes sir.

Q. You went out on the lands, did you? A. Yes sir.

Q. Then what did you do? A. We looked at the land.

Q. Did you go down and make the application? A. Yes sir.

Q. Who paid your expenses? A. Mr. Keebaugh.

Q. Did Mr. Copeland say anything about the purchase price of the land: what it would take to get it? A. Yes sir.

Q. What did he say? A. $2.50 an acre.

Q. Did you have the money? A. Did he have the money?

Q. So as to make the purchase? A. I suppose I could have got the money.

Q. Did he say anything about it? A. No sir.

Q. Nothing was said about where the money was to come from, was there? A. No sir.

Q. Did you make the entry? A. Yes sir.

Q. You made the application? A. Yes sir.

Q. Did you follow it up and complete it, and make the proof? A. No sir.

Q. Why didn't you? A. I decided that I did not want to.

Q. Did you have any further conversation with Mr.
802 Cpeland? A. No sir.

Q. That was all? A. Yes sir.

Q. You just dropped out? A. Yes sir.

Cross-Examination,

By Judge Read:

Q. Had anyone spoken to you about it before Mr. Copeland did? A. No sir.

Q. Or had you spoken to anybody else about it? A. No sir.

Q. Where were you when Mr. Copeland spoke to you about it? A. I was in the blacksmith shop.

Q. Tell us exactly what he said, as near as you can; his language? A. He told me that he wanted me to enter for some land: go out and look at it.

Q. Did he tell you that he wanted you to make the entry, or if you wanted to enter? A. He asked me if I wanted to go out.

Q. What did you say about that. A. I told him that I would study about it.

Q. You did study about it? A. Yes sir.

Q. Did you see him again? A. Yes sir.

Q. Where did you see him? A. I seen him in the blacksmith shop.

Q. What did you say to him then? A. I told him that I would go.

Q. You had thought over it then? A. Yes sir.

803 Q. Where did he say the lands were? A. He said it was out from Pike City, a little west.

Q. Did he tell you it was a good investment? A. I don't know that he did. I don't remember.

Q. Did he tell you that it would cost you $2.50 an acre to enter it? A. Yes sir.

Q. You say he did not tell you where you would get the money from? A. No sir.

Q. Nothing was said about the money? A. No, sir.

Q. By nobody at all? A. No sir.

Q. You went out and looked at the land, did you? A. Yes sir.

Q. You say you could have gotten the money, if you wanted to? A. Yes sir. I suppose I could.

Q. If you had wanted to go on and complete that entry you could have gotten the money? A. Yes sir. I suppose I could. I was working there.

Q. You were working there, and you were a blacksmith and you had credit, and you could have borrowed the money? A. I don't know about borrowing.

Q. You could have gotten the money yourself: you could have earned the money and entered the land with your own money? A. Yes sir.

Q. You went down there and made an application? A. Yes sir.

Q. Do you remember the langauge of the application? A. No, sir.

Q. You signed one, didn't you, and swore to it, down there? A. Yes sir.

804 Q. I will ask you if it was something like this language: (counsel here read to the witness one of the sworn statements similar to all the sworn statements introduced in evidence) That is the affidavit that they have to make. I will ask you if you made an affidavit like that? A. Yes sir.

Q. You got the notice of publication, did you? A. No, sir.

Q. But you did make an affidavit of that kind? A. Yes, sir.

Q. The facts you stated in the affidavit were true, were they? A. Yes sir.

Q. At the time you made it? A. Yes sir.

Q. After you made the application, you determined to abandon it? A. Yes sir.

Q. And you say that Mr. Copeland or nobody else spoke to you about it afterwards? A. No sir.

Re-Examination.

By Mr. Youmans:

Q. You did not get the notice of publication? A. No sir.

Q. You never got a notice for publication? A. No sir.

Q. Do you know whether anybody got one for you? A. I don't know.

Q. You say that you could have gotten the money to go on and complete your entry: from whom could you have gotten it? A. I was working for wages. I suppose I could have gotten it if it was necessary.

Q. From whom? A. I was getting wages.

805 Q. Who was paying you wages? A. The Martin-Alexander Co. was paying them.

Q. You would get it then, and save it from your wages? A. Yes, sir.

Q. Did you understand you would have to make your final proof in sixty days after you had made your application? A. Yes, sir.

Q. Could you have saved up enough from your wages in that time to have entered 160 acres of land at $2.50 an acre? A. No, sir. I could not.

Q. Did you have any already saved up for that purpose? A. Yes, sir.

Q. How much? A. I could not say. I don't know.

And further the witness saith not.

Mr. Youmans: The Government rests.

806 Forth Smith, Arkansas, Dec. 5th, 1902.

I hereby certify that the foregoing testimony is the testimony that was given on the trial of the case of the United States vs. Elmer B. Martin, et al, tried at the November term, 1902, of the District Court of the United States, for the Western District of Arkansas, in the Texarkana Division thereof, and used as evidence in the trial of this case, in pursuance of the stipulation herein contained.

P. C. HENDRICKS,
Reporter U. S. Court, West. Dist. Arkansas.

807 E. A. Schicker, a witness called for the defendants, being first duly sworn, testified as follows:

Direct Examination

By Judge Read:

Q. Where do you reside? A. Camden.

Q. What position do you hold? A. Receiver of the Land Office.

Q. Of the United States? A. Of the United States, yes, sir.

Q. How long have you occupied that position? A. Nearly five years.

Q. Do you know J. P. Copeland, the defendant? A. Yes, sir.

Q. Were you Receiver of the Land Office during the entries that were made, that are in controversy in this case? A. Yes, sir.

Q. Did you see Mr. Copeland prior to the time any of these entries were made? A. Yes, sir.

Q. State whether he came to see with reference to what entries could be made under the Stone and Timber Act.

A. It was in the spring of 1899, in the latter part of March or the first of April. He knew Mr. Friedham, who was Register at the time. He said he came there for the purpose of inquiring into the Timber and Stone Act; that there were a number of people in Pike County that wanted to make applications under that act, and gave us to understand that he wanted to comply with the law in every respect. He asked us if a married woman could make an application, and we told him she could.

Q. He seemed to be anxious to comply with the law in every respect? A. Yes, sir. He impressed that upon us.

Mr. Youmans: You mean, he said that to you?

808 The Witness: Yes, sir. He said it a number of times, in going over the conversation.

Q. Did he inquire particularly what was necessary, what he had to do under the law? A. Yes, sir. He inquired particularly. I could not go over the details. He asked us what was the proper method. I might explain that in all other entries that parties made in the land office,—they can be made before the County Clerks, County Judges and United States Commissioners, that is, before the County Clerks and Judges in the Counties in which the land is situated; but, under the Timber and Stone entries, the applicant must come in person to the Land Office, and the proceeding has to be begun there. That was thoroughly explained and gone over until it was thoroughly understood by him.

Q. Were there any other particulars that he inquired for that were explained to him? A. He asked as to the fees connected with the entries, the money required to pay for the land, and when it had to be paid for. We told him the application must be published 60 days, but all other entries were thirty days.

Q. Was there anything else, if you remember? A. Nothing that I can recall at this time.

Q. Were the lands in Pike County offered or unoffered lands? A. They were [offerred].

Q. What do you mean? A. By an act of Congress they were offered at public sale at $1.25 an acre. In other words, before the act was repealed, any person could buy [offerred] lands, as many acres as he wanted to, at $1.25 an acre, by making a non-mineral affidavit.

Q That was prior to what? A. I think it was repealed in 1888.

809 Q. Do you know how long those lands down there in Pike County had been subject to purchase in that way? A. For the length of time at $1.25 an acre?

Q. Yes sir. A. I don't know, no sir.

Q. In order to refresh your memory, I will ask you if it was in 1872 that that act was passed or altered? A. I could not say. It was repealed after I came into the Land Office. I never gave it any attention.

Q. Do you know, from the business of your office, that those were offered lands? A. All vacant lands in the District were [offerred].

Q. Did you ever see Mr. Martin there at Camden? At the time these entries were made? A. I never saw Mr. Martin at all.

Q. Did you ever see Mr. Alexander there? A. Yes sir.

Q. When was that? A. It was late in the summer of 1900.

Q. What was he doing when you saw him? A. Mr. Duke was then Register of the Land Office, and he boarded at the Ouchita hotel, and he said he met Mr. Alexander at the hotel and he invited him to the office, and he came over, and I was introduced to him. I don't know why he was there, or what he was there for.

Q. He was not there on business, so far as you know? A. No sir.

Q. Had you met Mr. Alexander before those entries had been made, or after they were made? A. It was after they were made.

810 Cross-Examination

By Mr. Youmans:

Q. After the entries had been made: you mean the applications had been made, or the final proofs had been made? A. My recollection is it was after the final proofs had been made.

Mr. McRae: After all the proofs?

The Witness: Yes sir. There were no more applications from Pike County after I met Mr. Alexander.

Q. Mr. Copeland told you that he wanted to comply with the law in every respect? A. Yes sir.

Q. He asked if married women were entitled to take up lands? A. Make applications under the Timber and Stone Act.

Q. You explained to him that, under the provisions of the Timber and Stone Act they were required to be made before the Receiver or Register? A. Yes sir.

Q. Were there any other particulars about which he asked you? A. As to the fees.

Q. Is that all? A. Yes sir. That is all I remember.

Judge Read: Was the law read over, also the list of questions to the applicants?

The Witness: Yes sir, I started to read that, and some one in the office who had a little spare time on his hands, got a circular from the Land Office, and opened it out, and turned over to the page in which the law is, and it was [thougholy] gone over. In fact, we were not very conversant with the law ourselves, it only applied to this since 1892. Before that time, 1892, no timber and stone entries had been taken up. These were the only ones, I believe that had been made.

Judge Read: You were not very familiar wit- the law yourselves?

811 The witness: No sir.

Judge Read: Since that time, what per cent. of money derived by the United States from Government land in Arkansas, has come from the Timber and Stone Act?

Objected to.

The Court: What is the object?

Judge Read: To show that lands, since that time, are being taken up generally, all around through the State.

Objection sustained. Defendants except.

And further the witness saith not.

812 Jim P. Copeland, a witness called for the defendants, (one of the defendants) being first duly sworn, testified as follows:

Direct Examination

By Judge Read:

Q. What is your name? A. J. P. Cpoeland, or Jim P. Copeland. My first name is Jim.

Q. Where do you live? A. Now, I live in West Texas at this time.

Q. Where did you live prior to going to West Texas? A. I lived in Pike County, Arkansas.

Q. What is your age? A. Well, I am nearer 66 than any other age.

Q. Where were you born? A. In Arkansas.

Q. In what County? A. Pope. 60 or 65 miles east of Fort Smith, on the Arkansas River.

Q. How long did you live there? A. Until I was about 25 years old.

Q. Where did you go from Pope County? A. To Dallas County.

Q. In this State? A. Yes sir.

Q. How long did you live there? A. I think I lived there about five years.

Q. Where did you move then? A. Pike County.

Q. How long did you live in Pike? A. I lived in Pike County from that time, till last spring.

Q. Then you have spent, with the exception of the time between last spring and the present, your whole life in Arkansas? A. No sir. I was in the Confederate Army four years that I was away from Arkansas, but my home was in Arkansas, and my family was there all the time.

Q. Except that time your whole life has been spent
813 in the State of Arkansas? A. Yes sir.

Q. What is your business? A. At this time, or prior?

Q. What has been your business since you grew up? A. I have been a farmer all my life. I have made my living principally by farming. I have been engaged in the real estate business, but I depended on farming mainly for my living. I regarded that as my occupation.

Q. Did you have any other occupation besides that of farming? And the real estate business? A. I have been a sort of preacher for thirty odd years, not that I have depended on preaching for a living.

Q. To what extent have you been a preacher? A. I have been a Pastor of churches continuously for thirty odd years.

Q. You say you have been a farmer also, and in the real estate business? A. Yes sir.

Q. When did you take up the real estate business? A. In about 1894 or 1895, some where along there. I don't remember but somewhere about that time.

Q. Have you held any offices in the State of Arkansas? A. Yes sir.

Q. What offices have you held? A. I was Sheriff of Pike County four years. I was first elected Sheriff in 1876, and I was re-elected in 1878, and served four years. In 1885 I was elected to the Lower House of the Legislature. In 1887 I was elected to the Senate, and served two sessions in the State Senate.

Q. Your official life, then, has all been from Pike County? A. Yes sir. I never was elected anywhere else save the
District that I represented was composed of Clark and
814 Pike.

Q. You say you were in the real estate business in Pike County? A. Yes sir.

Q. When did you go into the real estate business? A. As I remarked a while ago, it was sometime along about 1894 or 1895, I think 1894. I then went into the real estate business in the country town of Stillville. I was agent for the Iron Mountain lands in that Country, and after Pike City was established and located, I was then agent for the town lots in that city.

Q. When was Pike City established? A. I think, sir, it was in 1896 or 1897.

Q. Pike City, then, was established in 1896, or 1897? A. [Yesc] sir.

Q. Did you go there at that time: move there then? A. No sir. I moved my office there,—my real estate business, and I had an office in Pike City, but it was nearly a year before I moved to the town. I located Pike City,—if you will permit me, W. M. Slack of Little Rock and myself had worked for the Michigan Lumber Co., in locating and surveying timber in Pike and Clarke Counties. A. B. Meeker was the President of the Company, and we had been employed in 1887, to locate, survey and estimate timber on a great deal of Government land in these two Counties; and it was bought by the company at $1.25 an acre. The Public Domain at that time was subject to being bought at $1.25 an acre, and we worked for a good while.

Mr. Youmans: I don't think that any of this is pertinent to this case.

Judge Read: He is giving his history.

The Court: It is not very material. Cut it as short as you can.

The Witness: In this kind of business I became intimately acquainted with the public lands in those two counties,
815. and I went into the real estate business after that. This was in 1887. My object in going into this real estate business was that I was consulted by a great many people in regard to the public lands there, and I located a great many homesteads for men that came out there seeking a home, and would take them on the land, and show them the land,—in fact, I have entertained a good many of them in my house,—I don't know how many homesteaders I have located in Pike County. I went then into the real estate business, bought private lands and sold them, and sold lands for men who were non-residents.

Q. In that way, you became thoroughly familiar with the lands in your County? A. Yes sir. I had a plat of all the public lands in the County,—Government lands.

Q. You say a great many people consulted you about these matters? A. Yes sir.

Q. The homesteaders,—the people who wanted to take up homesteads? A. Not only the homesteaders, but other men. Men would come up there wanting to buy land, and invariably came to me, by some means or other. It was supposed I knew more about the lands than any other person.

Q. The people thought you were an authority on those questions? A. I could not say as to that.

Q. You moved to Pike City when? A. About a year after the town was established; but I had an office. I put an office, I believe, in the first house that was built in the town.

Q. You lived there continuously, after you moved there, until you left for Texas? A. I did.

Q. Why was it that you went to Texas? A. The
816 greatest motive in prompting me to move to Texas was on account of my wife's bad health.

Q. What part of Texas are you living in now? A. Living in the Western part. In Jones County. Something like 500 miles west of here, farming and raising a little stock.

Q. When did you first get acquainted with your co-defendants in this case? A. My first introduction to Mr. Alexander was sometime in the spring of 1897. I met him at Newtown first. I was preaching at that place. Mr. Alexander was there. I did not know what his business was. I was introduced to him, and he and I went with a friend of mine to dinner.

Q. Had he any interest in Pike City at that time? A. No sir. If he had, I did not know of any.

Q. Was there any mill at Pike City? A. Yes sir. There was a mill there that had been moved there from Smithton, in Clarke County, on the Iron Moutain Railroad, by Mr. Turner and Mr. Cravens, and they had run that mill for some time,—I don't know how long, and they had failed, and at that time the mill was standing there, and they had employed quite a number of hands there, and when the mill shut down, it was stopped for want of funds, because their paper was still at a discount. At the time I saw Mr. Alexander, it was not running, I don't think, at all.

Q. When did he locate at Pike City? A. It must have been two months after I first saw him, possibly three. This occurs to me: I met him in the spring, and he came there in July. I am not positive about the dates. I could not afford to be.

Q. Did he buy this mill plant that you spoke of? A. No sir. He run it. He and a man named Morrow rented the mill plant.

817 Q. What time did he purchase there, if at all? A. He bought the timber on about 7000 acres of land from the Receiver of that Smithton Company, who was Col. J. A. Woodson.

Q. Was that before the firm of the Martin-Alexander Lumber Co. was formed? A. Yes sir. Sometime before.

Q. Did Mr. Alexander locate his mills there? A. They were located there when he rented them. They had already been moved from Smithton.

Q. When was the corporation of the Martin-Alexander Lumber Co. formed, if you know? A. It was in Decemoer 1887 or 1888.

Q. December 1897, or 1898, do you not mean? A. Yes sir. 1897 or 1898. Thank you for the correction.

Q. What else did they own down there prior to taking up under this Timber & Stone Act? A. You speak of the Martin-Alexander Co.?

Q. Yes sir. A. Mr. Martin came there in December, with a view, so he told me, if the situation was favorable, to buying an interest in the mill.

Q. With Mr. Alexander? A. Yes sir, with Mr. Alexander. I had been at work with Mr. Alexander prior to Mr. Martin coming there, in the timber business, and Mr. Alexander instructed me to take Mr. Martin over that timber, and show him private timber in the vicinity of that timber and in the vicinity of the mill. We rode over the country three or four or five days and Mr. Martin became satisfied.

Q. About how much acreage of timber did they have at that time? A. They had 7000 acres that they had bought from the Receiver of the Smithton Lumber Company, besides a considerable amount of timber that I had bought from some other parties for him,—from Mr. Morrow, I don't know how much.

Q. Hadn't you bought Roots land at that time? A.
818 Mr. Alexander and Morrow, No sir. I bought all the timber that was purchased for them.

Q. You were speaking about an estimate of how much timber they bought, outside of the 7000 acres. A. I cannot make a definite estimate.

Q. The result was the formation of the Martin-Alexander Lumber Co., and Mr. Martin became interested? A. Yes sir.

Q. Did you continue to work for them? A. Yes sir. I had my contract with Mr. Alexander and Mr. Morrow, and they gave me a part of my time in their timber business, reserved out of the time that it was necessary to attend to their business, for my real estate business. I was running a farm ten miles from there, and I went there occasionally. After Mr. Martin came, they engaged me for my full time, except what I devoted to my real estate business, in the office.

Q. When did you first find out about this Timber and Stone Act, as it is called? A. It was in the spring of 1889.

Q. 1889? A. Yes, sir. 1899.

Q. How did you happen to know about it?

A. I wrote to Col. McRae, our Congressman, for a copy of the bill. of the law, and he sent it to me. After I got that, I had business below Camden, to buy a piece of land from a man that lived down in Columbia County, and he had a piece of land

adjacent to the mill. I went down there to see him, and while I was on that trip, I went into the Land Office at Camden. I had never seen Mr. Shicker up to that time. But I knew the Register before, Mr. Friedham, for a number of years. Mr. Friedham introduced me to Mr. Shicker. I told these gentlemen I had come down there after some instructions; that I had read the law, and did not know whether my construction of it was correct, or not; that I had come down there to con-
819 sult with them, in as much as the land would have to be bought at that office, and I wanted their construction of the law; that I wanted to be exceedingly careful not to violate the law, or not to violate any law, or have anybody else to do it.

Q. It was a new law to you? A. Yes sir; and we then sat down and went over the law,—particularly Mr. Shicker and myself. That was sometime in March or April. I know they were burning fires in the grates in the offices at that time. We went through the law thoroughly, particularly the oath that was requisite to take that land.

Q. Did you examine any form? A. Of the oath?

Q. Of the application and proof? A. Yes sir. We went over that very carefully.

Q. You got all the information you could from them? A. Yes sir. After I came home, I talked with some citizens there, that inquired about it, and told them what the law was, and what the construction of the Land Office Officers was in regard to the law, and informed them they could take 160 acres of land under that law.

Q. Was that prior to any conversation you had with the Martin-Alexander Lumber Co.? A. Yes sir? Prior to them ever seeing the land, so far as I know. Those men told me they would like to take it up, if they had the money.

Q. Who were they? A. John H. Scott, T. J. Clements, Robertson C. Gregory, that I remember.

Q. Were there others? A. I had a talk with others, but I remember those particularly.

Q. They said they would like to take up the land, if they had the money? A. Yes sir.

Q. Where does this Timber and Stone land lie, with reference to Pike City? A. Mostly north of Pike City?

820 Q. How far from Pike City? A. The nearest of those Timber and Stone entries from Pike City is a little over a mile; and they go as far as nine miles.

Q. Do you know about the amount of Public Land that there was in Pike City? A. I had a plat of all the Public Lands. I could not definitely state the number of acres. There was between 50 and 100.000 acres, as well as I remember.

Q. You talked to these people about it, and told them the information that you had gotten about this law? A. Yes sir.

Q. And they expressed themselves as wishing to take up this land, if they had the money? A. Yes sir.

Q. What was the next step that you took with reference to this matter? A. Sometime after that; I was in the office, and Mr. Martin made some inquiry about lands. I remarked to him that lands could be homesteaded, but the timber could not [go] cut until the patent was obtained, or the parties homesteading really lived on it for five years, except for improvements. I had studied that law pretty carefully, and I knew that law well. I made some mention then of soldiers scrip; that land could be purchased, and then I said, there is a Timber & Stone Act under which it can be purchased. As well as I remember, Mr. Martin asked what it was, and I told him my construction of it, and the construction of the officers of the Land Office; and possibly the next day, I got the law, and brought it up to the office, and Mr. Alexander, Mr. Martin and myself, went over it. In that conversation with them I remarked to them that there was good, honest, reliable men that had expressed themselves to me that they would take up land under that act if they had the money,

821 and one of the other men remarked,—I am inclined to think it was Martin,—that if I knew them to be honest and reliable, they would lend the money to any man that I would recommend as honest and reliable, and they would advance the money. I asked him about the security, "what sort of security would you want"? and he replied that he would not want any security at all if I knew them to be honest good men; that they would lend the money on promissory note with eight % interest. That is the first conversation I had with Mr. Alexander and Mr. Martin in regard to the Timber & Stone Act.

Q. At that time what men did you have in mind? A. I had those in mind that I had talked with.

Q. Were they good men? A. I so considered them, or I would not have recommended them. I think so yet.

Q. They had expressed a willingness to take up land, provided they could get the money to do so? A. Yes sir.

Q. What was your object in bringing up the matter with the Martin-Alexander Lumber Co? Telling them about this land? A. My object in doing so was simply that I had been working in the interest of the City there, and the development of the country, and I knew there was a large body of Government land that would sooner or later be taken. Prior to that time I had temporarily laid the lines for the extension of the railroad from Pike City to Caddo's Gap, and it necessarily run through the Government land and mine, and my idea was this; if there was

any benefits to be derived from it, that I would like to see the citizens of my County have it.

Q. You spoke to the mill people about the men being willing to take up this land, provided they had the money, and they told you if they were good, reliable men that they would lend them the money, and take their notes, without requiring any security? A. Yes sir.

822 Q. Was that all the conversation you had with reference to that matter? A. I don't remember that there was anything else besides that. There might have been more conversation than I have repeated right at that time and on that particular line, but that was the only topic that we discussed at that particular time.

Q. You and they went into the law together? A. Yes sir. The next day, I think it was, I took the law in the office, and we went over it carefully together, and I told them what Mr. Shicker had expressed to me in regard to the law.

Q. Did you understand, and did they understand, that you could not make any contract with these men with regard to the land? A. Why, the affidavit that we had very expressly forbid anything of that kind.

Q. Then you understood that, and they understood it? A. Yes sir. I explained it to those men.

Q. I am talking about Martin and Alexander; what men are you talking about? A. Certainly, they understood it, because we went over that very carefully.

Q. Did the parties buying the land understand it? A. When I went back—

Mr. Youmans: He has not stated any purpose to buy it yet.

Judge Read: I will withdraw that.

Q. What did you do after that conversation? A. I went to those men who had expressed a desire to take land under that act, and told them the Martin-Alexander Lumber Co. would loan them the money, and that they had authorized me to say to them that they would loan them money for the purpose of buying that land, and take their promissory notes, without security, at 8% interest.

Q. What did they say about it? A. They said they would do it.

823 Q. What did they do about it? A. We got together and we went out to look at the land. We went over it and we examined it in all its smallest legal subdivisions, on every 40 acres of it. I went with them to Camden and I made application with them, to [ovinve] my own faith in the matter. I took 160 myself, with the first application.

Q. Who went down with the first batch? A. There was John H. Scott, T. J. Clements, John H. Wilson, Robertson C.

Gregory, I think, and his wife and myself, and possibly some one else. I would not say positively.

Q. There was John H. Scott, Thomas J. Clements, John H. Wilson? A. Three.

Q. Robertson C. Gregory? Four: yes sir. He was along.

Q. Martha Gregory? A. Yes sir.

Q. And yourself? A. Yes sir.

Q. Went down together? A. Yes sir.

Q. Before you went down with those parties, or before you started there, had you ever had any conversation with Mr. Martin, or Mr. Alexander with reference to taking up any land yourself? A. No sir. I don't think I had.

Q. You had no talk with them in regard to the matter? A. I remember only that when I talked to these parties and they agreed to take the land, they asked me if I was not entitled to take land too.

Mr. Youmans: What parties?

The Witness. The parties named, John H. Scott and Clements and Gregory. I told them yes, and I said, I will go down with you, and I will take 160 myself.

Q. What did you do? A. We went to Camden together.

824 Q. Did you pay their expenses? A. I paid their expenses. I invariably had money of the company in my possession, because I was buying land continuously and timber; and I paid all our expenses out of the money of the company. Up to that time there had been nothing said by the Martin-Alexander Lumber Company about expenses; but I had paid the expenses out of the money I had in my possession of theirs and on my return home I reported what I had done to them and Mr. Martin remarked they would just charge that up to our account.

Q. That was on your first trip down. A. Yes sir.

Q. You got notices of publication on that trip? A. Yes sir.

Q. What was done with them? A. I went to the editor of the paper and made a special contract with him for the publication of those notices for a fixed price and obligated myself that I would become responsible to him for that money.

Q. Who was that? A. Mr. B. H. Nash.

Q. What was done with the notices after you got them? A. I took them all to the office and after they were put in type I read the proof to see that they were correct.

Q. Did these parties you went with know that you were going to do that? A. Yes sir, I told them so.

Q. After that how long did you have to wait before the final payment? A. The law requires that that notice of publication should be in the papers for sixty days.

Q. What was the effect of the publishing of those notices in the papers? A. The object of it, do you mean?

825 Q. No sir, what was the result of it in that community? A. There was a good deal of talk about it after that came out in the paper and numbers of men,—I couldn't say how many,—came to me and asked me to explain what it meant and almost every one that I had talked to I gave them to understand that the law required that it should be published sixty days in order that any parties might come in.

Q. Did these people that come to you come to get you to explain it to them: was it mere idle curiosity on their part? A. I didn't regard it as idle curiosity because in a number of cases they wanted to know if the land could be bought and they wanted to know every phase of that proof.

Q. How many men were in the employ of the Martin-Alexander Lumber Company during that time? A. There was between two or three hundred I think. I could not fully say. There was at various times over three hundred on the pay roll.

Q. What portion of the people living in the community, in the town and on the farms worked for the Martin-Alexander Lumber Company? A. That depends on the time of the year. After the crops are laid by,—between that and gathering time a very large percent of the people who were living there in that country work there in the mill either in the woods or work in the yard: but when it come time to gather the crops that class of men would go back and gather the crops and after the crops were gathered, between that and the time of putting in the next crop they would come back and go to work.

Q. There were between two and three hundred men employed? A. Yes sir; that country at that time was more sparsely settled than many communities in Arkansas. There was not a vast number of people living near the mill but the larger portion of the farmers would come in and get jobs as I have said.

826 Q. You say the result of this first going down there was to awaken an interest in the community in these lands and numbers of people came to you? A. Yes sir; I wouldn't pretend to say how many. I could not afford to do it.

Q. You were mingling with these people about the mill and in that community were you not? A. Yes sir; I was nearly all the time. Of course sometimes I had business out of town.

Q. When you had business out of town you met the men living out of town? A. Yes sir, and I had business out of the neighborhood.

Q. When you were there you were in daily communication with them? A. Yes sir.

Q. You said that Mr. Martin and Mr. Alexander told you that they would loan money to any one you would recommend? A. Yes sir.

Q. What was your course of conduct with reference to those people when they came to you and asked you about these lands, and the method of taking them up, and expressed a desire to take them up? A. My course of conduct was this that I did not present the name of any man that I did not think was perfectly reliable. Because they had trusted to my honor and stated to me they would loan money to anybody I recommended and I, of course recommended nobody but good men.

Q. Did you decline to recommend any? A. Yes sir, a great many more than I accepted.

Q. In other words a great many came to you that you declined to recommend,—more than you recommended? A. Yes sir I think I would be safe in saying double the number. I had a pleasant way of declining. I didn't do it abruptly
827 I did it in a pleasant way.

Q. In other words, you kept faith with your people and only recommended such men to them as you thought could be trusted and as you thought were honest and reliable? A. Yes sir, I certainly did.

Q. I believe you stated to them that these people you could recommend as people to whom you would be willing to loan money yourself? A. I said to him in the conversation that they were men that if I had money to loan I would loan them and I wouldn't be afraid to loan them money; that I knew them to be honest and reliable.

Q. After the matter was first taken up, after you went down there you say you went to them: the first conversation with Mr. Martin and Alexander and told them the result of the conversation? A. Yes sir.

Q. Did you go around there and hunt up men after that time? A. As a rule men hunted me.

Q. You didn't go around and hunt up men and asked them to come in? A. I did not.

Q. There is one witness, Moran: do you remember how he come to take up land? A. Yes sir, I think I remember, as distinctly as I remember making my home in West Texas. I was passing through the mill yard where he was handling thought lumber and I think I heard him call me Brother Copeland, or Uncle Jim and I halted and I went to where he was working and he said he wanted to know [womething] about this Timber and Stone Act, and he wanted to know if he could take up land under it, and I said yes sir, if you are twenty-one years

of age and a citizen of the United States you can, if you want to take the benefit of the Act. We talked the matter over and he said he would like to make an entry and expressed
828 himself as wanting to make an entry under that Act provided he could get the money; he says he understood the Martin-Alexander Lumber Company were loaning money to other men; yes, says I, they were doing that; and he asked me what it would cost him and I told him $2.50 an acre in the land office.

Q. Then you didn't go to him three times? A. I positively did not.

Q. Did you recommend him to the Martin-Alexander Lumber Company? A. No sir, I did not.

Q. When did you next hear of his application? A. I think the next information I had of it was through Mr. Alexander. He asked me about it and I told him,—

Q. Did Mr. Alexander ask you to show him the land?—Did you go out with Moran to look at the land? A. Yes sir I went out with him. Mr. Alexander didn't ask me that.

Q. How did you happen to go? A. I would like to answer the other question [forst] if you will permit me.

Q. I don't think the conversation between you and Mr. Alexander is proper. A. I don't remember. I went out with him and showed him the land.

Q. How did you show it to him? A. By riding over it and walking over it.

Q. Who was with you? A. Mr. Moran and his wife, and Bill Dorsey and Charley Davis and his wife.

Q. You had nothing further to do with reference to
829 the matter? A. No sir, they went then to Camden to make their application, but I never went with them to make their final proof.

Q. Were you present at any time at a conversation between Moran and Alexander in regard to their signing an instrument of any kind? A. Yes, sir, on one occasion I was present.

Q. What took place on that occasion? A. After they had made their final proof and come back to Pike City there was a conversation took place between the office and drug store, Dr. King's, as well as I remember, between Mr. Alexander and Mr. Moran and Mr. Dorsey, in which Mr. Alexander asked them to sign a note for the money that had purchased their land, and they declined to do it.

Q. What did they say: what reason did they give? A. Mr. Moran did the most of the talking. I don't know that Mr. Dorsey said anything special; but Mr. Moran said he would not sign a note unless Mr. Alexander would give him and his

wife $10 per acre for the land over and above the purchase money.

Q. In that conversation Mr. Alexander wanted him to sign simply a note; or did he want him to sign a contract? A. I didn't hear anything about the contract. I didn't see any contract.

Q. Were you present at any other time when they had a conversation? A. No, sir. that was the only conversation I was present at at all.

Q. These other parties whose names have been read, went to Camden to enter the land? A. The first applicants?

Q. After the first application was made you had to wait sixty days and go down to make final proof? A. Yes, sir.

Q. You went down with the first number that you
830 have mentioned? A. To make final proof?

[A.] Yes, sir. A. Yes, sir; I did.

Q. Had you arranged to get the money for these men before you went down there? A. For the first applicants?

[A.] Yes, sir. A. Yes, sir.

Q. Where did you get that money? A. It was expressed to me at Smithton.

Q. Where was it from? A. The German National Bank at Little Rock.

Q. The Martin Alexander Lumber Company didn't keep money then in Pike City? A. No, sir; they paid mostly with checks on the German National Bank. I suppose they kept money enough to meet the deman-s.

Q. This was expressed to you at Smithton? A. Yes, sir. I remember very distinctly when I got off the train the ticket agent told me there was an express package there for me, and he would like me to get it as soon as possible.

Q. The money was given to you in an express package? A. Yes, sir.

Q. What did you do with it? A. I took it to the hotel and counted it.

Q. What did you do with it then? A. I put it down in my pocket very carefully and took it to Camden.

Q. And then what was done? A. I was prepared with blank notes for each of the parties who went with me and we all went into my room in the Ouachita Hotel and each severally signed his note and I then counted out the money
831 to each of the parties, and went to the land office, and we paid our money and got the final receipts.

Q. What was done with the notes? A. I returned them to Pike City to Mr. Martin.

Q. What was done with the final receipts? A. They were put in the safe.

Q. How did they happen to be put in the safe: why didn't these people who entered the lands have the receipts? A. They did have them but they turned them over to me there. I had a special drawer in that safe where I kept my own papers. I didn't understand the combination of the safe, but I had a key to the drawer where I kept my papers, and I put those receipts in the drawer.

Q. Was that the custom; afterwards would the people hand their receipts to you for safe-keeping? A. Yes sir, I never demanded a receipt of any man.

Q. They gave them to you voluntarily for the purpose of safe-keeping? A. Yes, sir.

Q. Was there no safe or safe place in Pike City for papers of that kind? A. I don't remember any other safe in town. I am inclined to think there was not at that time. They had a large safe there that was regarded as being safe. I so regarded it.

Q. Now, the proofs of publication were given to you by these parties, and you also took them, I believe, for the purpose of having them published under this agreement that you had with Nash? A. Yes, sir.

Q. And these receipts were given to you for safe-keeping? A. Yes, sir, so far as I know.

Q. At least you never demanded or asked for them? A. No, sir, I never demanded a final receipt of any man or woman.

Q. Were these receipts there held subject to the
832 orders of the parties who deposited them? A. Yes, sir, I am sure when they got notice of their patents I invariably turned their receipts over to them? If they had made such demand on me prior to that time, I certainly would have delivered them to them because I did not desire to be custodian of them.

Q. The receipts were of no value to you? A. No, sir.

Q. Or to the Martin-Alecander Lumber Company? A. No, sir.

Q. They were made out to the parties? A. Yes, sir.

Q. The patents would be issued in accordance with the receipts wouldn't they, to each party who held the receipt? A. Yes, sir.

Objected to. Objection sustained.

Q. When was it that you got the timber contracts from these parties who went down? A. It was after we returned from Pike City after we made final proof and got the final receipt.

Q. What was your practice with reference to that? A. I don't know that I had any definite practice. Sometimes there would be a few days elapse, and sometimes more time would elapse. I was always furnished with blank contracts.

Q. Were you buying timber from other parties as well as these parties? A. Yes, sir, that was part of my business to buy timber and buy land. Sometimes I would buy land outright. I mean private land.

Q. Otherwise you would buy the timber from them? A. Yes, sir.

Q. The parties that you approached with reference to these contracts, did you approach them the same as you would approach any other parties,—how did you approach these parties that you went to? A. Well, sir, I approached
833 them in this way: I presented them with the timber contract and invariably told them if they signed that contract, their notes would be cancelled; that I would see that they were cancelled.

Q. Was the contract explained to them? A. Yes sir, I read it to them and where there was anything indefinite to them, I tried to explain it to the best of my ability.

Q. Were they willing to sign the contract after you had read it over to them with the understanding that their notes were to be cancelled; was there any force or coercion used with them what ever?

Objected to.

A. None whatever.

Objected to.

Q. State how you dealt with those people. A. I invariably went to them with a contract and told them that this was a timber contract, and read it to them, and if there was anything indefinite to them that required explaining to them they would point it out and I would explain it to them. I wound up by telling them if they would sign that contract that their notes would be cancelled.

Q. What did they do? A. They always signed them voluntarily.

Q. Were the notes cancelled? A. Yes sir, in every instance.

Q. What was done with the notes after they were cancelled? A. The notes, as a rule, was pinned to the contract; I asked Mr. Martin why that was done and he said,—

Objected to.

Q. The notes were cancelled and returned with the contract? A. Yes sir.

834 Q. Do you know what ever became of these notes after that? A. I know what became of mine.

Q. What became of yours? A. I burned it up.

Mr. Hemingway: Of which he had knowledge.

The Court: That embraces four or five different things. Now, you asked him if there was any other other agreement than the execution of the notes.

Q. You have heard all these affidavits read, have you not? A. Yes sir.

Q. You are familiar with the names of the men who made the entries under that Timber and Stone Act, in this indictment. A. Yes sir.

Q. Did you at any time prior to the time that the purchase of this land had been completed by the respective entrymen, make any agreement with any entrymen, that he or she would convey,—

Objected to as leading. Objection overruled.

A. I positively did not.

Q. Did you know of any other agreement or understanding directly or indirectly with any entryman before he perfected his entry, to the effect that his entry [mas] made for
836 the benefit of the Martin-Alexander Lumber Company? A. No sir.

Q. Did you make any agreement, directly or indirectly, with any entryman, by which he was to convey the land or his interest in the land or the timber on the land to the Martin-Alexander Lumber Company.

Objected to. Overruled.

A. I did not.

Q. Did you state to Colston, the witness who testified here in this case that the contract referred to in the act, permitted the purchase of these lands and meant a written contract? A. No sir, I did not, because I knew better.

Q. You knew it meant any kind of a contract? A. Yes sir. I knew it meant any kind of a contract expressed or oral.

Q. You made no such statement as that to him? A. No sir, I did not.

Q. Did you make that to any one of them? A. No sir.

Cross-Examination

By Mr. Youmans:

Q. You say you know it meant any other kind of a contract expressed or oral? A. That is what the affidavit said. I am sure. Read that.

Q. You say you knew it meant any whatever, and a contract in writing—any other contract expressed or oral? A. I did not understand the law required a written contract at all. Any kind of an agreement expressed or implied.

Q. When was that note returned to you? A. It was sometime after I signed the timber contract. I could not say how long.

Q. In no case that you are familiar with, or that you have had anything to do with in regard to these entries, were there any contracts entered into with reference to this land, before the land was purchased by the parties who bought the land? A. With whom?

[A.] The Martin-Alexander Lumber Company. A. No sir; none whatever.

Q. Or with you for the Martin-Alexander Lumber Company? A. no sir, no sir, no sir.

Q. Did you approach any man at all about a contract after he had purchased his land? A. Never in my life.

Q. I want to ask you this question: was there anything said or done by the Martin-Alexander Lumber Company, or anyone connected with them, by which you understood that these men who purchased land or entered it, were ever promised, directly or indirectly, or were directly or indirectly under any obligation to convey the timber on this land to the Martin-Alexander Lumber Company, or to you for them until after they had completed their purchase?

Objected to as leading and as requiring a half a dozen answers and as calling upon the witness for a conclusion.

The Court: The defendant is just like any other witness, and is governed by the same rules. He can state everything that was done one way or the other, and then you can ask him whether or not there was anything else except this. You can ask him if there was any other agreement made of any
835 kind or description; but I don't think it is competent, in the shape you put it to allow him to answer. It is really direct and suggestive.

Defendants excepted.

Mr. Hemingway: There is an allegation in the indictment that a contract or agreement had been made prior to the perfection of the proofs, whereby these parties bound themselves to convey the land: that these agreements were made with Copeland. We say that Copeland made no such agreement, and it seems to me proper to ask him if such an agreement was made or if he knew if any such was made. You cannot prove by a man that a thing was not done except by asking him: but proving what has been done does not negative the fact that something else was not done, does not bring it to his attention and does not give him the opportunity of saying that he did not have this knowledge.

The Court: The question is whether or not there was any agreement made either by him or the Martin-Alexander Lumber Company to the effect that these lands were to be conveyed.

The Court: Oral or written?

The Witness: Yes sir, oral or written.

The Court: Was sufficient to violate the law, as you understood it?

The Witness: Yes sir, I certainly did.

837 Q. Did you understand that it applied also to any agreement whether it was oral or written,—whether it was expressed or not either orally or in writing? A. Yes sir, I knew it applied to any kind of an agreement.

Q. Whether it was expressed orally or in writing or any at all? A. I don't know how I would get at an agreement without some expression.

Q. Oral means by the mouth and written by writing on paper. Those are the only two to which you applied it? A. I applied it to every thing that might imply an agreement.

Q. And didn't tell him it was an oral or written agreement? A. I applied it to everything that might imply an agreement.

Q. Now, you say that you had a talk with Mr. Martin with regard to the public lands in Pike County? A. Yes sir, I did.

Q. You told him that there were public lands in Pike County? A. Yes sir, I did.

Q. Did you talk to him as to the manner in which these public land- could be acquired? A. Yes sir. I told him that they could be homesteaded, but I explained the provisions of the homestead law.

Q. What were the provisions of the homestead law? A. That the timber could not be cut off the land except for improvements until the law had been complied with and the homesteader had lived on it five years. I was conversant with that law.

Q. The object of the inquiry was the matter of timber growing on the land; was that it? A. I can not state as to his object. I cannot state what was in his mind.

838 Q. The matter of timber was in your mind? A. The matter of Government land.

Q. Didn't you say that you explained to Mr. Martin that the timber could not be cut off? A. Yes sir.

Q. Then the matter of timber was in your mind? A. The matter of timber was in my mind.

Q. The matter of timber was in your mind at that time? A. The matter of the strict compliance of the law with regard to timber was in my mind and I expressed it to him and explained it to him.

Q. And you told him that the timber could not be cut off from homesteads until after the patents had been obtained? A. Or until the party had lived on it five years.

Q. What was the next thing about it? A. I told him Government land could be obtained by soldiers' scrip.

Q. And you also told him that it could be obtained under the Timber and Stone Act? A. Not at that meeting.

Q. State when it was you had this conversation with him with regard to the acquisition of land under the Timber and Stone Act. A. It was sometime after that. A short time after that.

Q. Were there inquiries made of you by Mr. Martin in regard to the acquisition of public lands? A. No sir.

Q. You brought up the matter yourself of the Timber and Stone law? A. Yes sir, at the next conversation we had. I told him there was a law on the statute book known as the Timber and Stone Act.

Q. Why did you bring up the matter of these public lands again? A. Because I had talked with those parties
839 that I alluded to awhile ago, and they had expressed willingness to take the land under that Act.

Q. You knew that the Martin-Alexander Lumber Company desired to acquire land for the purpose of cutting the timber off of it? A. Yes sir, because I was buying it continuously.

Q. That was the reason you mentioned it to them: you knew all they [wnated] was to get the timber off of it? A. I could not say that was all my reason, because I had talked with those parties previous in regard to the Timber and Stone Act, and they expressed a desire to take land under that act and I so told Mr. Martin and later on I took the law in the office.

Q. The only reason you had for bringing the matter to the attention of the Martin-Alexander Lumber Company was that they were interested in timber? A. No sir, I had another reason.

Q. What was the reason? A. The reason was this. These men had expressed themselves to me as desirous to take that land under that act, and I wanted these poor men in my county to have the benefit of it.

Q. What interest did Mr. Martin or Mr. Alexander have in them? A. I don't know,—you will have to question them. I don't know their minds.

Q. Then why was it you went to Martin and Alexander with a matter that had arisen between you and some other individual? A. I have just told you exactly the reason in as plain language as I can convey.

Q. All that you said was because these men had expressed their desire to make timber and stone entries and that you wanted them to have the benefit of it? A. Yes sir.

840 Q. Why was it necessary to speak to Martin and Alexander about that? A. Because they had positively told me that they did not have the money.

Q. Was that the only reason? A. Those were the main reasons.

Q. Main or not, I am asking for all of them. A. If I have any other reasons, in some cases, I don't know what they are.

Q. Did you expect to get the money from the Martin-Alexander Lumber Co.? A. I did not know, sir, until I mentioned the matter to them, whether they would or not. I never had had an expression from them. I thought I could have borrowed the money on my ind-vidual account, but I did not think how about these other men.

Q. What [businews] was the Martin-Alexander Lumber Co. engaged in at Pike City? A. They manufacture of lumber.

Q. And nothing else? [—] No sir. They had a large commissary there, and they sold dry goods and groceries.

Q. It was in connection with their business? A. It was run in their name, and I suppose you might say so. They sold to other people besides their employees.

Q. You knew it was in connection with their mill business? A. It is owing to what they term—what kind of employees. I knew they were running a commissary, and that they were supplying anybody that asked.

Q. You don't say that you know, or don't know? A. Will you allow me to explain?

Q. Yes sir. A. They had a commissary there, and
841 sold goods to anybody that wanted them and had the money to pay for them, whether they were in the employment of the company or not. They made no difference there so far as citizens were concerned. They came in there with produce and sold it and bought goods.

Q. That is all the answer you want to make in connection with that as to whether they were running a commissary in connection with the mill business? A. I will say that there were other stores run in connection with the mill business, because they all sold to the mill employees. I have said all that I know about it.

Q. Were they in the business of loaning money? A. The Martin-Alexander Lumber Co.?

Q. Yes sir. A. As to making it a special [businews], I don't think they were. I will answer to the effect that they did not loan money.

Q. Were they in the business of loaning money? A. Making that a special business?

Q. Or a part of their special business? A. Yes sir. They loaned money, to my certain knowledge.

Q. They made a business of that? A. How many loans does it make to constitute a business. If you mean that they

made that exclusively, or exclusive of anything else, I will say no, they did not.

Q. You were there, connected with them, in their employ? A. Yes sir.

Q. You know what they were doing there in Pike City, did you not? A. Oh, I don't know everything that was done there in Pike City. I know they were manufacturing lumber, and selling goods and [groces].

Q. You knew everything they did there in the way of business? A. Oh no sir, no, no. My business was separate and apart from theirs, and I did not pry into their private
842 business.

Q. I am talking about their public business: you know about whether they did hold themselves out as money lenders? A. No sir? Not to my knowledge.

Q. Why did you go to them then, for the purpose of securing loans of money? A. I did not do it.

Q. Why did you go to them? A. I only expressed myself to them in this way, as I have stated prior, that I knew of good, honest, reliable men there that were desirous to take land under that act, if they had the money; and I never asked them for a loan.

Q. How did it happen that you expressed [thar] to these men? A. Well, I will have to refer to my former answer: I was anxious for my people there to derive whatever benefit that might accrue from the entering of this land.

Q. It was your solicitude for the welfare of the citizens of Pike City? A. Yes sir. I think I had that, as far as any other reason for it.

Q. What did you expect to effect by making that statement? A. I did not know.

Q. In other words, there was no purpose about this at all: it was just a casual remark that you made at that time? A. No sir. I could not say that it was either casual or incidental, because those parties had expressed themselves that they wanted to take the land if they could get the money, and I so expressed it to them, and casually made the incidentai remark as a remark that did not mean that.

Q. The casual or incidental remark: that has no purpose in it? A. Yes sir. That is it.

Q. You had a purpose in it? A. Yes sir; and I
843 will tell you what the purpose was.

Q. Well. A. The purpose was that I made them know what these parties said.

Q. What occurred between Martin and Alexander and you when you told them that? A. They remarked that if I knew them to be good, honest reliable men, that they would loan them the money,—any man that I would recommend as being

honest and reliable, that they would advance the money to buy the land with.

Q. That was all that was said? A. Yes sir.

Q. There was nothing said about timber at all. A. No timber was mentioned that I have any recollection of. It was land that we were talking about.

Q. Nothing was said about timber? A. I don't think there was a wo-d said about timber, or a tree on the land.

Q. Nothing except the loaning of the money? A. To buy land with.

Q. What kind of land was it: what was the [characterr] of the land? A. It was timber land.

Q. That is what you had reference to? A. Yes sir.

Q. Did you say anything about that? A. No sir. I don't think there was timber on each.—

Q. You simply said that you knew of honest men who would enter lands: did you tell them the particular act.—under the Timber and Stone act, if they had the money to do it? A. Yes sir.

Q. Did you tell them the act? A. Yes, sir.

Q. Without anything else, Martin and Alexander
844 said they would loan money to such people for such a purpose: is that right? A. Yes sir.

Q. That was all that was said about it? A. Yes sir.

Q. And without security? A. Yes sir.

Q. And upon that you went to those people and spoke to them about it? A. Yes sir. Told them what Martin and Alexander had said.

Q. Who were those people? A. Mr. Youmans, I have named part of them.

Q. You have named John H. Scott? A. And Clements and Gregory.

Q. Thomas Clements was working for the company? A. Yes. sir.

Q. Gregory was also working for the company? A. Yes sir.

Q. You had had these conversations with those men before you went to Martin and Alexander? A. Yes sir.

Q. Did you tell them the names of the parties with whom you had these conversations? A. No sir. I [tild] them this; that there were a number of good, honest reliable men, that would take land under this act if they had the money.

Q. You had these men in your mind: you had already talked with Scott, Clements and Gregory? A. Yes sir.

Q. And Wilson; he worked for the company too? A. Yes sir.

Q. You had these men in mind at that time? A. I suppose I did.

Q. They were working for the company at the time? A. Yes sir.

845 Q. And Martin and Alexander knew that did they not? A. Oh, yes sir. They knew them; but they did not know them as well as I did.

Q. Why was it necessary for you to recommend these men that they knew themselves, and that were on their pay-rolls? A. They had not known them like I did. I knew them for years.

Q. They knew that they were working there, and that they were on their pay-roll? A. They knew them as their employees.

Q. Why didn't you say "It is John Scott, who works for you right now, and T. J. Clements who works for you right now, and John H. Wilson, who works for you right now, and Gregory, who are good honest men", and let them decide for themselves? A. Because there was other parties connected with those. I don't know why I did not express it in that way. I had a sort of a method of expressing it, that there were a number of good, honest men.

Q. But all of them did not go on the same note: each one was to get a separate loan? A. Yes sir.

Q. And it was to depend upon the individual honesty of each particular ind-vidual? A. Yes sir.

Q. Why did you not make the men known to them: they did know them, didn't they, and they were capable of forming a judgment as to their honesty? A. Yes sir. They did. But I had known them many years prior to that.

Q. Didn't you think that Martin and Alexander were capable of forming a judgment as to these men, as to their honesty, by reason of their association and employment? A. They didn't always.

Q. You didn't give them an opportunity always? A. Sometimes.

846 Q. Why didn't you do it on this occasion: you never gave them an opportunity, did you? A. No sir. I never named any particular party. If I had gone into the details, I, perhaps, would have named myself, but I did not do it.

Q. It was not necessary to name yourself: they knew you, did they not? A. Yes sir.

Q. You were in their employ? A. Yes sir.

Q. Mr. Alexander had been associated with you for a number of months? A. Yes sir.

Q. And knew exactly how you stood in the community? A. No sir.

Q. It was not necessary to name yourself? A. If he had known as much of the other parties as I did—

Q. Didn't you tell me you did not say a word to them about the ind-viduals: you just said you knew certain ind-viduals, but did not name them? A. I remember I did not mention them.

Q. How long had you known John H. Wilson? A. I had known him a year or more.

Q. Had not Martin and Alexander known him about that long too? A. Yes sir. Just about.

Q. Those that you have mentioned, Scott, Clements, Copeland, Wilson, Hughes, Gregory and his wife went the first time down there? A. Yes sir.

Q. Had you told Martin and Alexander that you intended to make an entry under this law? A. No sir. They knew personally nothing of that until I made the application and came back.

Q. You had no agreement with them, then, as to a loan of money? A. No sir.

847 Q. You did not know whether they would loan you the money? A. Well, I had every reason to believe they would.

Q. What reasons had you to believe that? A. I thought they regarded me as an honest and reliable man, and that was the reason. I did not have a doubt about it.

Q. The financial ability of the men had nothing to do with it: Is that what you mean? A. No sir. I did not say I meant that.

Q. You said honesty: was the financial ability of those men to repay it considered at all? A. With whom?

Q. With you and Martin and Alexander when you talked about it? A. It was not mentioned.

Q. All that was mentioned was the honesty of the men? A. And reliability.

Q. Whether they would have the means to repay it, was not considered? A. Not a question asked about that.

Q. Those were the first people that you went down there with? A. Yes sir.

Q. You say that the first time people talked to you themselves. A. I said after the notice of publication was put in the paper and the people began to read them, and it attracted their attention, and they were inquiring as to the method of obtaining this land. That is what I meant to say, if I did not say it; and I think I said it.

Q. You heard Charles W. Davis testify, didn't you? A. Yes sir.

Q. Don't you recollect that he said that you came to him about it, and spoke to him about it? A. I might have done so. I would not try to contradict his testimony at all.

848 Q. How many of these men who entered lands under this Timber and Stone Act were employees of the com-

pany at the time they made the entries? A. I don't think that I could answer that definitely. The majority of them were.

Q. I will have to ask about each one separately: John H. Scott? A. He was an employee.

Q. Thomas J. Clements? A. He was.

Q. Jim P. Copeland? A. He was.

Q. John H. Wilson? A. He was.

Q. Robertson C. Gregory? A. He was.

Q. And Martha Gregory was his wife? A. Yes sir.

Q. Joseph O. Means? A. He was an employee.

Q. Archibald G. Winslow? A. He was.

Q. Caroline H. Means was the wife of— A. J. O. Means.

Q. Emma Winslow was the wife of Archibald G. Winslow? A. Yes sir.

Q. James F. Patterson? A. He was.

Q. Henry M. Lints? A. He was too.

Q. Emma E. Lints was his wife? A. Yes sir.

849 Q. Bill D. Copeland? A. He was not an employee.

Q. He was your son, was he not? A. Yes sir.

Q. William F. Anderson? A. He was.

Q. Rosa L. Anderson was his wife? A. Yes sir.

Q. Gus Copeland? A. He was not.

Q. Geo. F. Colston? A. Yes sir.

Q. Henery Jones? A. Yes sir. He was.

Q. Bedford F. Patterson? A. I don't have much recollection about Mr. Patterson. A very indefinite recollection. I suppose that he took an entry, and that he was an employee. I do not know, for certain.

Q. Emmett Keebaugh? A. Yes sir.

Q. Charles W. Fuller? A. Yes sir.

Q. Henry P. Hughes? A. Yes sir.

Q. Robbie Hughes was his wife? A. Yes sir.

Q. Stephen A. Fuller? A. Yes sir.

Q. Alvin Pry? A. Yes sir.

Q. Geo. W. Cooper? A. Yes sir.

Q. E. Y. Fuller? A. Yes sir.

850 Q. Willie Cooper was the wife of Geo. W. Cooper? A. Yes sir.

Q. Thomas Roberts? A. Yes sir.

Q. Mittie C. Roberts was his wife? A. Yes sir.

Q. Lawrence C. Horne? A. He was an employee.

Q. William F. Waits? A. He was an employee. He was a log hauler. He was hauling logs on the skidway.

Q. He was a log hauler of the company? A. Yes sir.

Q. Sherman L. Garrison? A. Yes sir.

Q. And Barbara Garrison was his wife? A. Yes sir.

Q. Seborn Z. Moran? A. Yes sir.

Q. Charles W. Davis? A. Yes sir.

Q. Bill Dorsey? A. Yes sir.

Q. And Mary E. Davis was the wife of Charles W. Davis? A. Yes sir.

Q. Emma J. Moran was the wife of Seborn Z. Moran? A. Yes sir.

Q. Jim Pennington? A. Yes sir.

Q. Jennie V. Pennington was his wife? A. Yes sir.

Q. Charles M. Mackey? A. Yes sir.

851 Q. And who was Carrie M. Hicks? A. Well, sir, she was the wife of a man whose name was Ed. Hicks, who was an employee.

Q. Who was she: she was a sister of Mrs. Pennington, was she not? A. Yes sir.

Q. I have called over the whole list of names mentioned in the indictment. A. And the majority of them were employees.

Q. Are they not all employees, except the married women, and one of the Fullers? A. Yes sir.

Q. And your two sons? A. Yes sir.

Q. Out of the whole 43 or 44 of them, except your two sons and one of the Fullers, and the married women, all were employees of the company, and all the married women were the wives of employees of the company? A. Yes sir. That is correct.

Q. Did these separate individuals named have sufficient means to have entered these lands? A. All of them you mean?

Q. Yes sir. A. I could not answer that. I hardly think they did, though. Of course, I was not well acquainted with the financial status as I am with the ind-viduals. I could not say that I know positively, but my impression is that they were not.

Q. Did not you inquire of all of them whether they could make the entry or not: had the money? A. I don't think I did.

Q. Didn't they all come to you and make inquiry of you with regard to it? A. Yes sir. Not all of them. There were [exceptuions].

852 Q. How many did not come to you? A. I could not state. Very few. Charles W. Davis testified that I went to him, and I would not challenge his testimony. I think he was the only witness that did so.

Q. Did not one of the Fullers state so also? A. If he did, it was so.

Q. Did you not explain this matter fully to all three of the Fullers; that it was necessary to have a certain amount of money to make these entries? A. I did.

Q. Did you know their condition in regard to getting money? A. As to those three fellows,—I don't think there

was a single one of those men that could not have borrowed t[illegible]at [a,ount] of money. They are first-class men.

Q. What did you do to the others? A. There was some of them that I know very little about.

Q. Which ones? A. A number of them.

Q. Can you name all of those certain specified ones that are mentioned here, or mentioned in the indictment. Which of these did you know about as regarded their financial condition? A. Yes sir. I knew a number of them, I presume.

Q. Did you know anything about Joseph O. Means? A. Of my own knowledge, I did not. I know what he told me in regard to his position at home; that he was in good fine shape financially.

Q. Where was his home? A. In Illinois, he told me. He had a very fine farm, he told me.

Q. He did not live in that community at all? A. Yes sir.

Q. That was not his home? A. No sir. He had his family there.

853 Q. And you said he spoke to you about what he had at home? A. No sir. I told you he spoke to me about having a very fine farm there.

Q. He does not live there now? A. No sir.

Q. He has not lived there for a good while? A. He has not lived there since soon after Mr. Martin sold out.

Q. And Mr. Winslow does not live there? A. No sir.

Q. And Mr. Jones is not living there? A. Jones remained there until sometime, I think, after Mr. Martin sold out; and Mr. Winslow left there before Mr. Martin sold out.

Q. You say you would take those parties with you at the time they went down to Camden, and would pay their expenses? A. Yes sir.

Q. What did you say was done with regard to those expenses? A. They were charged to them. So I was informed.

Q. Who informed you? A. Mr. Martin.

Q. On the books? A. Yes sir.

Q. Do you know why, on the books? A. No sir. I did not keep the books.

Q. Of your own knowledge, you do not know anything about it? A. I know what Mr. Martin did with regard to those men, and other cases.

Q. Do you mean the account, or an account other than the account as they were presented on Saturday, on that ledger when Mr. Rowe testified to the accounts; did you know of any other account except that? A. When Mr. Martin gave me the information that he did in regard to the expenses, he
854 remarked to me that he would charge it to us on the books.

Q. That is all he said? A. No sir. I never examined the books. There was no secrecy about it one way or the other, but I did not see them.

Q. Did you hear the testimony that $27.25 was charged on those books in each one of those cases? A. Yes sir.

Q. You heard that? A. Yes sir.

Q. Was that the amount of expenses that was incurred in each case? A. The amount of the expense on each trip was charged to the applicants. They traveled over the same number of miles, and their hotel bills were equal, and so were their hotel expenses, so that all that was included in the expense account.

Q. Why [dix] you take such particular care to know that the expenses of each ind-vidual was equal to the separate expenses of each other ind-vidual? A. Simply because I had to account for it on my return.

Q. Why? A. Because it was charged up to them. If I did not get it correct, I would be charged with it.

Q. Why was it necessary for you to have anything to do with it? A. When I went with them the money was furnished me to pay their expenses.

Q. What was the reason that made it necessary for the Martin-Alexander Lumber Co. to furnish the money for their expenses? A. You will have to ask them. I cannot read [theur] minds.

Q. You understand! I never asked you any question about reading their minds. I simply asked you the plain pointed question, did you know why it was done. Do you know? That is all. A. Let me answer that. I want to answer it
855 again. I don't know by expressions from them. I know they furnished the money. That money was charged to me, and on my return I furnished an expense account, and I got credit for whatever I knew the expenses to be. I knew they were invariabiy the same. The charges at the hotel were the same, and that was the only expense we accounted for.

Q. At the time the money was given you, were you directed by Martin or Alexander what to do with it? A. As a rule I went to them and asked for expenses to pay the expenses of those people, and it was given me.

Q. You stated a moment ago that this money was given you by Martin or Alexander; I ask you the question were you directed by either one of them, at the time [thw] money was given to you, as to what you were to do with it? A. No sir. Not directed by them. When I applied for the money, I applied for it as money to pay their expenses,—the parties that were going to Camden.

Q. Why did you apply for it? A. Because they did not have it?

Q. Did Mr. Martin or Mr. Alexander know what you were going to do with this money? A. Certainly they did, because I told them.

Q. When? A. When I applied for it.

Q. That was the first time that anything was said about expenses,—was when you applied for it? A. In each case I know that I said when I went with the first applicants. I had some of their money in my pocket, and I paid their expenses out of their funds, and when I came back I reported. I did not always go with the parties, but [wheb] I did I went and asked for expense money, and it was always furnished.

856 Q. The first money that you used was your own money; it was money that you had of Martin and Alexanders? A. In trust, yes sir.

Q. You expended it for those parties without being authorized to do it? A. Yes sir. But reported when I came back what I had expended the money for.

Q. Did they express disapproval of what you had done? A. No sir. They just remarked that they would charge it up, and give me credit for it.

Q. It was charged to you? A. Yes sir. I had from a dollar to $15.00 of their money all the time.

Q. That was the first that was ever said? A. That was mentioned on the first application to be expenses. Invariably, after that, when I went, I went to either one or the other and asked for expense money, and it was furnished to me.

Q. No further conversation was ever had as to this expense money, or the reason why it was furnished? A. No sir.

Q. They never asked you, after you came back, why it was done? A. They never expressed any disapproval. I supposed they knew I had it, because it was charged to me. I did not spend all the money. When I came back I told them what I had done, and Mr. Martin—

Q. That was all that was said at that time about expenses? A. Not a single word was ever said about expenses prior to the time that you reported to him?

Q. You came in [anr] reported that you had paid the expenses of those separate ind-viduals down [ti] Camden, and Mr. Martin [saif] it was all right? A. Mr. Martin had no knowledge, so far as I know, that I was going to Camden to take any of them down.

857 Q. You paid the proofs of publication? A. Yes sir.

Q. You took them to the editor to have -hem published? A. Yes, sir.

Q. They were paid for by the company? A. They were paid for by me.

Q. Did you report that to the company? A. Yes, sir.

Q. What was said about that? A. The money was repaid to me.

Q. The money was repaid to you? A. Yes, sir.

Q. What was done with the items of— A. The items of publication?

Q. No, sir. The items of expenses. A. I could not tell you.

Q. You don't know a thing about it? A. No, sir.

Q. Is that all that occurred between you and Martin and Alexander when you went up and reported the fact that you had paid for these applications, and th-y repaid you the money? A. Yes, sir. I don't know whether they were charged on the books or not. I don't know that. I never looked at the books in the office.

Q. How did Mr. Martin or Mr. Alexander, whichever one you made the report to, know what to do with those items? A. I invariably told them the amount of money that was necessary to pay for the publication of the notices. As to how they knew what to do with it, I don't know.

Mr. Read: What he meant is, did you give them each separate item?

The Witness: Certainly. I invariably took a receipt in the name of the party.

Q. What did you do with the receipt? A. I kept them.

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Q. You did not turn them over to the company? A. No, sir. I told them the amount.

Q. You had never had any talk with Martin or Alexander with regard to those expenses until you brought the proofs of publication and gave them notice of what you had expended? That was the first and only talk you ever had? A. Yes, sir.

Q. You have stated all the talk you had with regard to it? A. With Mr. Martin and Mr. Alexander?

Q. Yes, sir. A. I think so.

Q. That simply was a report of the expenses, and the amounts, and separate [individuals]; and they simply repaid you the amount of money? A. Yes, sir.

Q. The first time you went down, you had no talk with them in regard to making an entry? A. No, sir.

Q. Did you ever have a talk with them in regard to your entry between that time and the time you made your final proof? A. I think I did.

Q. When? A. I think it was afterwards. I am sure I did, and with them, when I went to them for money to pay the notice of publication.

Q. What talk did you have with them? A. I wanted the money.

Q. I mean with reference to your making the entry? A. I may have told them after my return. I have no definite recollection of it. I have nothing to conceal.

Q. I understand that. I am just getting at the facts: What was your purpose in telling Martin and Alexander about it, if you did not state anything to them before? A. My purpose in telling them about it?

Q. Yes, sir. A. I don't know that I could tell you
859 exactly what my purpose was, sir.

Q. You had no reason to go and tell them that you had made an entry (a pause) I say did you? A. I might have had. I am [pretth] confident they knew it, and I might have expressed it to them. Doubtless, I did.

Q. You had no purpose in doing that? A. No, sir. I have not said that, or I would not say it.

Q. What interest did they have in knowing what you had done? A. They had none in the world, so far as I was concerned.

Q. You met them, or reported to them that you had made an entry: That is all? A. Yes, sir.

Q. When you went down there you got money from them to pay for your entry, as well as the others? A. Yes, sir.

Q. Did you tell them the amount you wanted? A. Yes, sir.

Q. That included your entry? A. Yes, sir.

Q. Then they knew, at that time, it was for your entry? A. Yes, sir.

Q. And they knew it was for the others also? A. I suppose so because they furnished me blank notes for all the parties, and myself, and when the other parties signed, I did mine.

Q. Did you get money for the fees at that time? A. Yes, sir.

Q. Fees for yourself? A. Yes, sir.

Q. Fees for the other parties? A. Yes, sir.

Q. And their expenses there and back? A. Yes,
860 sir.

Q. You did not pay those out of any money at that time you got for this particular purpose? A. On the second trip?

Q. Yes, sir. A. Yes, sir. The first time I paid it out of my own money I had in trust, and the second time, when we went to make final proof, I got the money at Smithton.

Q. At that time Mr. Martin and Mr. Alander knew what this money was for? A. Oh, certainly.

Q. Was that the first conversation you had with them with regard to the loaning of money, after the first conversation that was mentioned? A. So far as I know, it was. I have no recollection of having any other conversation with them regarding loaning money until after I had made application and got ready to make final proof. After a few days I went to them and asked him for the money.

Q. You had stated to them that you knew certain parties, honest men, who would make entries under the Timber and Stone Act if they had the money to do it? A. Yes, sir.

Q. Their reply was that they would loan money to such parties? A. Yes, sir.

Q. The names of parties were mentioned? A. No, sir.

Q. Did you name the parties at this second interview? A. Yes, sir. I got the money. Yes, sir.

Q. That was the first time, after this first meeting, that the question of loaning was ever talked about? A. So far as I know, it was.

Q. You did not mention it at the time you turned in
861 your expenses of those different parties? A. No, sir.

Q. You did not mention it at the time you got the money to make the final proofs of the others? A. It was about the same time.

Q. All these names were mentioned at that particular time? A. Yes sir.

Q. Those notes? A. Yes sir.

Q. What did those notes cover? A. It was a promissory note to pay in six months, at eight per cent.

Q. I mean the amount? A. I think the notes were for $400.00.

Q. That was just the amount of the purchase of the land, and nothing else? A. Yes sir. I informed them the Registers and Receivers fees would have to be paid, and they always furnished the money.

Q. Why was not that enumerated? A. I don't know, sir. I never heard.

Q. You had nothing to do with the writing of the notes? A. No sir. They had agreed formerly, when I approached them, to loan money on a promissory note, with 8% interest, payable in six months, without security.

Q. Nothing, at that time, was said about expenses? A. No sir.

Q. And nothing was said about that time about the payment of the officers fees? A. No sir. I did not know what the officers fees would be till I made the application, and inquired at the Land Office.

Q. But you knew that there would be fees? A. Oh, yes sir.

862 Q. You had been to the land office at that time and gotten information? A. Yes sir. I found out there was a law that applied to these Timber and Stone entries that I was particularly interested in.

Q. The fees were not included in that note? A. I think not.

Q. Do you know of any reason? A. No sir. I do not.

Q. The total expenses, including the fees, was put at $27.25, in each case, was it not: did you know that? A. I only know it from what I heard. Those books were undergoing examination here.

Q. Why was this sum not included in the note? A. I cannot answer that question.

Q. It was not included in your note either? A. No sir. My note was for $400.00.

Q. What about the time that was consumed by those who were employees of the company, in going to and fro? A. I could not tell you one word about anybody else's time but my own. I can tell you about that.

Q. Was that paid? A. There never was a day of lost time charged up to me while I was in the employ of the company.

Q. Do you know anything about the others? A. No sir.

Q. Do you know whether they got the benefit of their lost time, or not? A. No sir. I never heard. I never inquired.

Q. Then, your time was paid when you took these people out there, on the different [occassions] and the time consumed by you? A. As I stated, the company never charged me with an hour lost time after I commenced to work for them.

863 I made various trips. I went to my farm, about 11 miles from there, and on various occasions I would go with parties who wanted to purchase lands, to look at the lands. There was never a charge against me for such time. I was sick at one time,—hurt by a horse,—and was not able to work for two weeks, and there was never a charge against me for lost time. I could not answer about anybody except [myzelf].

Q. What did you do with the notes? A. I turned them over to Mr. Martin.

Q. What did those specify in regard to its being purchase money for land? A. As well as I remember, there was a memorandum on those notes that they were for the purchase money of certain described tracts of lands.

Q. Did they say purchase money from whom. A. No sir. I think that was a kind of memorandum on the bottom left-hand corner.

Q. Of every note? A. Yes sir.

Q. When you got back you turned over those notes, and gave in a statement of your expenses? A. Yes sir.

Q. What was the next thing done about those lands? A. After that. I give a timber contract.

Q. How long after that? A. I don't know, sir. I could not tell you how long it was. It was quite a little while. Before I gave mine? Before it was acknowledged, do you mean? It may have been a week or ten days elapsed. I was furnished with a timber contract.

Q. Who furnished it? A. Mr. Martin. In blank, it was. All but the signature.

Q. The description was in? A. Oh, yes sir.

864 Q. Your name was in? A. Yes sir.

Q. The date was in there? A. Yes sir.

Q. What does that paper show: (showing paper to witness) I will ask you if that paper is the contract you have reference to? A. This bears date April 14th, 1900, and is the second contract that I gave.

Q. Where is the first one? A. I took it up and destroyed it.

Q. Why was that? A. That was given not a great deal after I returned. This was given after I received my patent.

Q. What was the necessity for giving the second contract? A. So far as the necessity is concerned, I cannot express the necessity. I can express what they said to me.

Q. You had made a contract sometime after you had returned? A. Four or five days. I could not fix the time definitely.

Q. The contract was similar to this? A. Just exactly like it, with the exception of the dates.

Q. You gave them the privilege to cut the timber? A. Yes sir.

Q. After you had made your first contract you had nothing to do with the cutting of the timber? A. I had nothing to do with the cutting of any timber. There was a verbal agreement with Mr. Martin that there was to be no cutting of timber on my land until I had obtained the patent, and there was not.

Q. Why was that? A. Because I did not want it done.

Q. Was that all the reason? A. I did not want it, and he did not do it.

865 Q. Now, as a matter of fact, did you not write to the Secretary of the Interior, that you were afraid to have it cut, or cut it— A. I don't think I did. I do not think you will find anything in that letter (taking letter),—I believe that was an expression.

Q. That was not correct then? A. I knew that after I got a patent that I would be [absoluetely] free to cut it.

Mr. Youmans: We want to introduce this letetr?

Judge Read: What is the object of it?

Mr. Youmans: It would go to the credibility of the witness. (to the witness) You admit that you have stated in that

letter to the Secretary of the Interior that you were afraid to cut the timber? A. Yes sir. I have stated that in that letter.

Q. Why did you state a while ago that the only reason was that you simply did not want it cut? A. That is what I said.

Q. Why did you say that? A. Because I knew I would be absolutely, to all intents and purposes, the owner of that land after I got the patent, and I thought it was safer to have the patent before the timber was cut.

Q. Then, your reason was that you wanted a patent before it was cut? A. Yes sir, and it was not cut until I got the patent.

Q. Notwithstanding, you wrote to the Secretary of the Interior that you were afraid to cut the timber until the patent was issued? A. That is the expression that was used in there.

Q. But you had made a contract, long before that, giving the privilege to these people, on the face of it, to cut this timber? A. Yes sir. With an [agreenent] that it should not be cut until the patent was issued; and I saw that the oral agreement was not violated.

866 Q. All that you had was their oral promise? A. I thought that was sufficient.

Q. You had no legal remedy to prevent them cutting it, if they saw fit to do it? A. I did not think I needed a legal remedy.

Q. Why did you not put that in the contract? A. It was already written before I drawed it. I did not want to be captious in the contract, and signed the contract with that verbal agreement.

Q. You have had experience with contracts? A. Yes sir, I have; and with men. Some men you can depend on, and some you cannot.

Q. Why was it necessary to have a contract at all, then, if you could depend upon them implicitly, in everything? A. So far as the business contract between the company and myself? I do not know that it was necessary. I do not know that it would have been necessary; for they always complied with their agreements with me.

Q. Why did you make it? A. Because there were [others] matters connected with it.

Q. Why was it necessary to make a contract with them, with a verbal understanding that they should not cut the timber? A. If you insist on an answer to that,—I am subject to die.

Q. I have not [questionee] that at all. Was that the only reason, because you might die? A. That was one of the reasons.

Q. Were there any other reasons? A. Oh, yes sir. We might consider a great many reasons. That is the main one. There is a necessity of a man having a deed from the
867 Receiver. It is an evidence of purchase.

Q. So, that the purchase was just as complete then as it was at any other time, was it? A. Aside from that verbal agreement, it was.

Q. Why is it that you stipulated that the timber should not be cut until after the patent was issued? A. I have expressed to you, and I have expressed to the Secretary of the Interior, and I have expressed it orally, that I thought when I obtained the patent, the land would be absolutely mine, [unmistakeably], and I could do as I pleased with it.

Q. We are talking about the timber: Why was it that you insisted that that should not be cut until the patent was issued? A. Mr. Youmans, I don't know how to command language to express me, why, any plainer than I have done.

Q. You stated one reason: that you thought you might die? A. I stated another reason, that I thought, when I got the patent, I would, to all intents, be the owner of the land, without any chance of litigation.

Q. What chance of litigation could there have been? A. I am not a lawyer, and I could not answer that question.

Q. If that was one of the reasons, you certainly had some reason for thinking so. A. I cannot answer. I am not a lawyer.

Q. You certainly considered some reason at that time. You say that was one of the reasons for making that arrangement. A. I wanted a patent because I believed I would be, undoubtedly and to all intents and purposes, the owner of that land when I was in possession of that patent.

Q. But you would not be the owner of the timber growing on the land when you got the patent, if this contract were outstanding. A. No sir. Because I had signed a contract for the timber.

Q. You did not tell the Secretary of the Interior that
868 you, at that time, had made a contract for the timber? A. Does the letter say I had?

Q. Does it? A. If it does, I said it. I don't think it does. (Letter passed to witness) No sir.

Q. Why didn't you tell him? Why didn't you acquaint the Secretary with the facts in regard to it? A. I did not think that would interest him at all. My object in writing to the Secretary was just as stated in that letter. Mr. Shicker told me that we could obtain the patents in three or four months,—before we done it.

Q. You were going on to say that the reason was just as you stated in this letter; for what? A. I think later I used the expression "afraid to cut the timber".

Q. Didn't you say something else in that letter? A. Yes sir.

Q. You wanted the proceeds? A. Yes sir. Of the land.

Q. Not of the land, but of the timber? A. If you will let me state,—

Q. Just answer the question. A. I have got to explain before I answer.

Q. Didn't you say some other reason, besides being afraid? A. Yes sir. I might want the proceeds of the land, not of the timber. You will see that. You will see that it is the proceeds of the land.

Q. Go ahead now, and see. A. (Reading) Besides I stand greatly in need of the proceeds of the land" Now, if you will give me an [oppurtunity], I will explain what I meant by that. As before stated, I had made a temporary survey of the extension of that Railroad from Pike City to Caddo Gap, and I knew that the only way for the company to get
869 through Caddo Gap was to go that way, and that survey ran over that land, and my object was to sell the right of way over that land to the railroad company.

Q. You say that you needed the proceeds to live on, "Want the proceeds of the land" you say: that is what you stated? A. Yes sir.

Q. Didn't you state to the Secretary of the Interior, in this letter, that the land was worthless, except for the timber? A. Yes sir.

Q. How could you get any proceeds out of the land? A. I meant for agricultural purposes, just as I stated in my application. That would not be worthless for right of way for a railroad to run over it, and that road could not get out of there by any other possible way, except by going over the land. That was one object I had.

Q. You told the Secretary of the Interior that it was worthless, except for the timber and stone that was on the land? A. Yes sir.

Q. Then, you wanted the proceeds of the land? A. I told him that in the same construction.

Q. And you say, in that affidavit, that it was not fit for cultivation? A. This idea I had in my mind when I said it was worthless I supposed, except for the timber.

Q. Then if it was worthless except for this timber, there was nothing on it to give it any value? A. Yes sir. There was, for me.

Q. And your purpose in keeping it, you say, was to sell it to a prospective railroad? A. Yes sir. That was my purpose in keeping it. I have got my patent in my pocket.

Q. Is the road located? A. I told you a while ago, that they made the survey.

870 Q. You don't know whether it would touch that land? A. I know it could not get away from there except by going over that land.

Q. That was your object in writing that letter: you did not regard the timber at all? A. We thought at that time that the railroad would go immediately through Caddo's Gap, and buy the right of way.

Q. Then you did not refer to the timber at all? A. I had already signed a contract for the timber.

Q. You have stated that it was understood that they were not to cut any timber until you had gotten your patent? A. Yes sir.

Q. You had stipulated in your contract, that no timber was to be cut until you got your patent? A. No sir. I signed a contract just like all the balance signed, with the verbal agreement with Mr. Martin that not a stick of timber was to be cut until my patent was obtained.

Q. That was part of the contract? A. Yes sir.

Q. You considered it as binding as the written contract? A. Yes sir.

Q. Then, if no patent had issued, it never would have been cut? A. That is a very foolish conclusion. I expected to get a patent. I had a final receipt.

Q. You knew that if there was no fraud in your transaction, it was just as complete as if you had the patent? A. I knew there were no frauds. As I said to you a while ago.—I hope you won't leave that proposition, because it is important evidence, and I don't intend to let you off.—that I realized the fact that if I had a patent, I would be, to all intents and purposes, the legal owner of that land. I did not know that I had the legal right to sell that land until I did get the
871 patent.

Q. But, you had a legal right to sell the timber? A. Yes sir. I did contract, but with that verbal provision that the timber was not to be cut.

Q. Why was it necessary to make that provision? If you had the right to sell the timber, it was not necessary. A. I regar-ed that verbal part of the contract, as part of the contract.

Q. Why was it necessary to make it, if you had a legal right to sell the timber? A. I was not lawyer enough to know that I had any.

Q. Had you taken any advice upon the subject at all? A. No sir.

Q. Did you think that you did not have the right to sell the timber? A. I don't know. I thought I had.

Q. Why, thinking you had a right to sell the timber, did you make a stipulation that it should not be cut until you got

your patent? A. Because I did not want it to be cut. I stated to you as plain as I could.

Q. You stated that you did not want it done.

Judge Read. He stated, time and time again.

Q. But, you stated that you had a right to sell the timber? A. Yes sir.

Q. Was that the only reason for that? A. No sir; that that would not be—

Q. —for not cutting timber, because you wanted to be sure about it? A. I wanted to be absolutely certain.

Q. So that you would be certain about it! You did not know whether you had any right or not? A. I thought it was right.

872 Q. Do you know whether your contract was conveyed by Mr. Martin to anybody else; or, was the timber cut, before it was conveyed? A. My contract was conveyed to the Detroit Timber Company.

Q. Did they have notice of this verbal agreement? A. No sir. There was no,—no. I had the patent in my pocket.

Q. Who made that contract,—the contract was written out for you, was it? A. Yes sir.

Q. Had you had any talk with Mr. Martin before the contract was presented to you? A. No sir.

Q. None whatever? A. No sir.

Q. He just presented the contract, and asked you to sign it? A. Yes sir. I went over the contract.

Q. Had there been any talk before the contract was prepared? A. I don't know when it was prepared. I don't know who prepared it, or when it was prepared?

Q. You had not authorized it prepared? A. No sir.

Q. When it was presented to you to be signed, you made no objection to signing it? A. Not after I read it in detail, with this one exception, that there would be a verbal agreement between him and I that the timber was not to be cut until the patent was obtained.

Q. The contract was prepared without your knowledge, and when it was presented to you for signature, the only objection to it was that it did not contain a certain stipulation; and you made a certain verbal stipulation to cover that fact: is that all correct? A. Yes sir. If I understand you in regard to the terms of the stipulation.

873 Q. That is the verbal stipulation. A. It is a verbal agreement that the timber is not to be cut.

Q. That was all the objection you had to make to the contract, and you signed it at once, without any further talk between you? A. Yes sir.

Q. It provided that $400.00 had been received as the purchase price of your timber? A. Yes sir.

Q. And it was also provided that the balance arising from the timber should be paid to you, should there be any beyond the amount above stated, and 8% on the $400.00. It stipulated that you should pay interest on the $400.00? A. Yes sir.

Q. Which you had acknowledged there that you had received? A. Yes sir.

Q. In other words, you were to pay them interest on money that you had given this contract for? A. Yes sir. That is right.

Q. They had received the $400.00 from you?

Judge Read: They had not. Read it. He acknowledged the receipt of $400.00 from them.

Q. You had received it, and, in giving this contract they acknowledged the receipt of that money on the purchase price. A. They acknowledged it.

Q. That paid the $400.00, didn't it? A. Yes sir.

Q. You were to pay 8% interest on that? A. Very well, if that is the condition.

Q. (Reading) It is admitted that said purchaser has, at the date of the execution and delivery hereof, paid on account of the purchase price, the sum of $400.00, the receipt of which is hereby acknowledged" and, "the $400.00 shall be payable in monthly payments, at the end of each month, as the timber from time to time is cut or removed from said premises." They acknowledged the receipt of the $400.00 in payment of it. A. I understand that I,—

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Q. You had acknowledged the receipt of the $400.00 and yet, you were to pay interest on that $400.00? A. They acknowledged it,—

The Court: You paid them $400.00 by taking up your note: Why did you pay them interest on the $400.00 after you took up your note? That is what he wants to find out, I suppose.

Q. Judge Read. They had advanced him $400.00, and that is what is stated in there; that they had advanced him $400.00 on this contract. The timber was to be paid for by a credit of this description.

The Court: The contract recites on its face that they received $400.00 from him, —I mean that he had received $400.00 from them. They did not receive the $400.00 in money. They transferred that, and cancelled the note.

Judge Read: That is all.

The Court: (To the Witness) He wants to know why, when you had done that, you paid interest on the $400.00.

Q. The contract recited that it had been paid and received. A. I regarded that contract as being given in lieu of the note, if you will let me express it in my own terms, and the note was bearing interest. I did not understand, when I signed that contract, that the interest was to stop at all. I know more about business than that; but I did not think they would realize their money until they realized it out of the timber.

Q. So that, under the terms of the contract, the interest was still accumulating upon you until such time as they saw fit to cut the timber? A. Yes sir.

875 Q. If it was for one year or two years, or three or four or five years, whatever that time might be, the interest was still accumulating? A. I understand all of that.

Q. They had not cut the timber on your [—]; and at the time of the purchase by the Detroit Timber and Lumber Co.? A. I don't think they cut all of it. They never cut any until I got my patent.

Q. Did you take up any other contracts in the same way; for the reason that patents had not been obtained. Did you go to Mr. Wilson?

Judge Read: Any second contracts? Did you get second contracts from other people? A. Oh, yes sir. A number of them.

Q. Did you tell them that, in each case? A. I can give you my instructions.

Q. Who gave them to you? A. Mr. Alexander.

Q. What were they? A. The information that I got from Mr. Alexander when I made the second contract and they took up the first contract, was this; that there was a possibility of parties selling their lands before the patent was obtained; but after the patent was obtained, if they sold their lands then, the contracts after the patents were obtained would be void on the land, and there might be a legal question sprung as to the contract they had obtaintd.

The Court: The validity of the contract?

The Witness: Yes sir.

Q. When you went to Mr. Archibald Winslow, did you know of the patent being issued on his land? A. Yes sir. I think his contract was sometime after the patent.

876 Q. How did you know the patent was issued? A. The receipts were there, and invariably, when they got notice of the patents being at Camden, they would come and get their final receipts.

Q. Mr. Winslow lived at Prescott? A. Yes sir.

Q. He had not taken his receipt with him? A. I don't think he had. I think he wrote about it.

Q. Don't you know that Mr. Means had left there also? A. Before the patent was obtained?

Q. Yes sir. A. No sir. I don't know that. I don't think he had. I think you are mistaken about that? Mr. Means never left until some time after Mr. Martin sold out to the Detroit Timber & Lumber Co. I am confident he had the patent prior to that. In fact, I never went to anybody for a second contract until the patent was obtained.

Q. How did you know it was obtained? A. By them getting notice that the patent was at Camden, and them coming there and getting their final receipt.

Q. Did Mr. Winslow come there? A. I am pretty positive that he wrote a letter.

Q. And you went down there? A. No sir. I never went for anybody's patent in my life.

Q. I am talking about the contract: You went down there to get him to sign it. A. Yes sir.

Q. What was the necessity of your going? A. The same necessity that I have explained in any other contract.

Q. Couldn't you explain it in your letter? A. I might have done so.

Q. You went down there and got the second contract? A. Yes sir.

877 Q. Himself and his wife? A. Yes sir, and he signed them in his house. There were some of those second contracts were not signed in my presence at all.

Q. There were some in which there were no second contracts obtained? A. Possibly so. I will not say about that. I did not get any except where patents had been obtained.

Q. Were there not some in which the patents had not been obtained, in which you did not get second contracts? A. I could not state about that.

(Noon recess)

(2 P. M.)

J. P. Copeland still on the stand.

Re-Examination

By Judge Read:

Q. I believe you stated in one aswer that in all cases where second contracts—that you were advised in all the cases where patents had been obtained that second contracts were subsequently obtained? A. Yes, sir.

Q. They were the same, in every respect except as to dates? I believe you said that? A. Yes, sir. With the exception of dates.

Q. What object was there in doing that, in taking that second contract? A. The object expressed by Mr. Alexander

to me was this; that in case parties transferred their lands to a third party, there might be some doubt as to who held the timber.

The Court: Under contracts obtained before the patent was issued?

The Witness: Yes, sir. Against parties purchasing the land.

Q. There was no understanding between the Government and these parties: it was between the purchaser of the land, and these parties? A. That is as I understood it.

878 Q. You stated that you had a verbal agreement with them that there was not to [—] any timber cut off your land until the patent was issued, because you thought it would be absolutely safe after that? A. Yes, sir.

Q. Was there any agreement of that kind made with any other parties? A. I regarded that as the general understanding. Why, I could not say. I got an impression,—between the parties and the Martin-Alexander Lumber Co.?

Objected to.

Q. Was there any timber cut off of any of the lands until the patents were issued? A. I do not think there was, in a single case.

Q. That was the rule, as you understand it? A. Yes, sir.

Q. With reference to these expenses, I believe you stated that you have no recollection of any conversation with Mr. Martin or Alexander, by which they were to advance the expenses; and you went down with the first batch and you paid the expenses, and you turned it in, and it was charged up to them? A. Yes, sir. That is what I said.

Q. Now, whether any of these men, in talking to you about entering the land, did any of them say anything about getting money to pay their expenses down there? A. Yes, sir.

Q. They wanted to borrow that, in addition to this other sum? A. Yes, sir.

Q. While you don't remember any conversation with Martin or Alexander, you understood they were willing to advance it? A. I did not state I did not remember any conversation. The first conversation we had was just before we went back to make final proof on the first application. I asked them for money to pay the expenses.

Q. Afterwards they understood they were going to advance this money? A. Yes, sir. They invariably

879 furnished me the money. I suppose they did other parties.

Q. These parties, in applying to you for money, and talking to you about money, did they say anything about the expenses? A. Yes, sir.

Q. The cutting of timber down there, I believe, after the Detroit Timber & Lumber Co. entered, was stopped by an injunction proceeding of some kind? A. Yes, sir.

Q. Up to that time had there been a great deal of timber cut off of these stone and timber entries: I mean before the injunction. A. The Detroit Timber & Lumber Co. has cut considerable timber off of it. I do not work for the company.

Q. Had there been a great deal cut before the Martin-Alexander Co. sold out? A. No, sir. I know about it, because I worked for the Martin-Alexander Co. up to the time they sold out.

Q. Do you know, as a matter of fact, whether there were a great many entries there where the timber was not cut at all? A. Yes, sir.

Q. The timber cutting was stopped by this injunction? A. Yes, sir.

Q. I believe you made a statement to Mr. Schlierholz in regard to your connection with this matter? A. Yes, sir.

Q. Had you made a statement prior to that time? A. Yes, sir.

Q. To who? A. A man named Knox.

Q. Who was Mr. Knox? A. He told me he was employed by the Government to come down there and investigate.

Q. Did you give him a voluntary sworn statement about it? A. Yes, sir. Without disguising anything about it.

880 Q. Did you make a statement to Mr. Schlierholz, also, when he came down there about it? A. Yes, sir.

Q. How long were Mr. Schlierholz and Mr. Knox investigating the matter? A. Mr. Schlierholz was not with Mr. Know when he first came there. Mr. Knox was there a considerable length of time. I could not say how long. Possibly ten days or two weeks. He went to a great many of the entrymen. He came to me and told me he was a Government officer, and was sent there for the purpose of investigating the matter, and asked if I would make a statement, and I told him yes. I suppose he was there ten days or two weeks.

Q. How long was Mr. Schierholz down there? A. I could not tell you that.

Q. I want to ask you if you at any time consulted any one with reference to this matter?

Objected to.

Judge Read: It is something that slipped my memory.

Mr. Youmans: I do not want to take any advantage of any kind.

Judge Read: You introduced this examination. I want to show by him that he had made this statement, and had made a previous statement.

Mr. Youmans: If that is all, I have no objection to it.

Q. Did you undertake to state fully to them everything you knew about the transaction? A. I certainly answered every question propounded to me to the best of my knowledge.

Mr. Youmans: Your questions are leading.

Q. In this statement that Mr. Schlierholz took from you, and which was introduced in evidence, I see this language: "In the conversation about the act, I told to the mill people Mess Martin and Alexander, that I knew of good and
881 honest people, who would take up some land under the act, if they had the money, and they said that they would loan [thst] class of men the money if they would take up the land; I asked them then what security they required, and their answer was that they would only take their individual note, without any security. I then hunted up the parties whose names were mentioned, with the possible [escception] of Bedford F. Patterson, whom I do not recollect, at various times, and explained the law to them, told them that they would get the money from the Martin-Alexander Lumber Co., and that the Martin-Alexander Lumber Co. would trust to their honor to pay it; I showed them the land and gave them the description of the same, told them the probable estimate of the timber on the respective tract and told them that the timber on the land at [%o] cents a thousand feet would pay more than the land would cost, and told them they could sell the land or the timber, after the patents were issued. I did not know anything about the financial condition of Archibald G. Winslow, Harry Jones, John H. Wilson and Emmett S. Keebaugh, but the remainder of the parties who made these entries were poor men who did not have the money to make the entries. Neither myself nor my sons had the money to make such an entry. I generally went with the parties who had agreed to make the entry, to the land office at Camden, Arkansas, to make the application, also as a rule paid the expenses to Camden and return, as [wrll] as the hotel expenses, and paid for the advertisements, but took the receipt from the publisher in the name of the party who applied for the entry. The money which I paid out for such expenses was paid back to me by the Martin-Alexander Lumber Co., and frequently they paid me the money for the expenses and when I returned I made a settlement with them. Whenever I went with the parties at the time of final proof, I generall- paid the expenses of the applicants and the witnesses. Whenever I went with a party of applicants to the

Camden, Arkansas, Land Office, for final proof, I was furnished the necessary money to pay for the land, and the
882 Register's and Receiver's fees by the Martin-Alexander Lumber Co., and also with notes, made out without signatures, for the respective parties who were to make such proof." In this statement, which I have just read, who did you mean when you said "I then hunted up the parties"? A. I meant to convey that I hunted up the parties with whom I had had previous conversations in regard to this land.

Recross-Examination

By Mr. Youmans:

Q. Did not you state in your cross-examination that you paid the expenses of the first entrymen who went down to Camden? A. I did.

Q. And you said nothing to Martin or Alexander about it until after you presented your statement upon your return, of expenses? A. If you will let me repeat, I will tell you exactly.

Q. Answer my question (Question repeated). A. There was nothing said about expenses until we had made the trip and made our applications, and, as before stated, I paid the expenses out of money I had in trust, and when I returned from Camden, after the first application we made, I told Mr. Martin how I had paid the expenses, and the amounts, and the fund I had paid them out of.

Q. And he said it was all right? A. Yes, sir.

Q. And that was all that was said? A. Yes sir.

Q. That was the first conversation about it? A. Yes sir.

Redirect Examination.

By Judge Read:

Q. You were in charge of buying the timber for the Martin-Alexander Lumber Co.? A. Certainly, sir.
883 Q. And they let you you manage that part of it? A. Yes sir. I bought thousands of acres of land that they never knew.

Mr. Youmans: This matter of expenses, had no reference to timber?

The Witness: No sir. The direct question was, was I in charge?

Mr. Youmans: I thought you were offering it as explanatory of what you had been.

Judge Read: No sir, only to show that he had money in his possession.

And further the witness saith not.

* * * * * * * * *

885 The Depositions of U. L. Clark and Roy McDonald, taken on the 7th day of Februaru 1903 beginning at two O'clock P. M. between the hours of two o'clock P. M. and five O'clock P. M. at the office of Rose Hemmingway & Rose, in the city of Little Rock, Pulaski County Arkansas, to be read in evidence in the cause pending in the United States Circuit Court for the Western District of Arkansas, Texarkana Division, wherein the United States is plaintiff, and the Detroit Timber & Lumber Company and others are defendants.

886 U. L. Clark being duly sworn deposes and says:

Direct Examination

By W. E. Hemmingway, Esq.

[1;] You are the same person whose deposition has been taken in this case? A. Yes sir.

Q. Attached to your deposition are certain letters, some addressed to you and others written by you. Are those [latters] that were, in fact, written by Mr. McDonald to you and received by you, and written by you to Mr. McDonald and sent to Mr. McDonald? A. Yes sir.

Q. In the [latter] dated December 31st from Mr. McDonald to you, the letter of January 5th, and the letter of January 7th, from him to you, and in the letter of January 9th from him to you, reference is made to vacant lands in the vicinities in which Mr. McDonald was at that time inspecting lands in Pike County. I will ask you to explain what was meant by "Vacant lands" and what object you had on considering vacant lands in that vicinity? A. The words "vacant lands" we considered as Government lands and I had in view locating different kinds of scrip on the best timbered government lands that was in the vicinity, which we afterwards did.

Q. About when did you cause the government lands to be inspected and when were the entries made by your scrip? A. The government lands north—The government lands we inspected, commenced estimating those after January 15th, after we had bought out the Martin-Alexander Lumber Company. We commenced estimating them by forty acre tracts, the same as the other lands. We estimated the whole territory there, regardless of whether they were government or private individual lands.

Q. What was your purpose in having the estimate made? A. So as to know whether there was timber enough on them to justify us in laying scrip on them.

Q. After you finished the investigation, did you make entries with scrip that you held? A. Yes sir.

Q. About what amount of Government land did you enter in that county? A. Something near 20,000 acres. We commenced laying that scrip about the first of April.

Q. Did you make any entries, or attempt to make any, under the Timber and Stone Act? A. No sir.

Q. Did you ever at any time intend making any, or
887 [causing] any to be made, or assisting persons in making entries under the Timber and Stone Act down there? A. No sir. I never did. I did think once or twice I would take up 160 myself.

Q. Then when, in this correspondence reference was made to vacant lands, it was with the idea of ascertaining what lands were subject to entry, with a view to taking up lands, if sufficient quantities were found, with scrip? A. Yes sir, if they were sufficiently covered with timber to justify us in laying the scrip on it.

Q. In your deposition, reference is made by you to the receipt by you of patents that were issued by the government to persons who had made entries under the Timber and Stone Act. Have you any of these patents with you? A. Yes sir.

Q. Is it in the same form and does it contain the same general provisions as the other patents? A. What other patents do you have reference to?

Q. I mean those that were received by you from persons who have made timber contracts with the Martin & Alexander Lumber Company, and which you bought from that Company? A. The patents of those entries were all just alike. There is nothing in them to show that they were entered under the Timber and Stone Act.

Q. Will you deliver to the Notary one of those patents to [be] filed as an exhibit to your deposition? A. I hand the Notary the patent to Emmett S. Keebaugh, of date the 9th of February 1901.

(The patent above referred to, is herewith filed, and marked Exhibit "A" and made a part hereof)

Cross-Examination

By F. A. Youmans, Esq.:

Q. You say, Mr. Clark, that these patents, so far as the recitals or what they contain is concerned, is the same? A. Do you mean the lands in dispute?

Q. Yes sir. A. Yes sir.

Q. With the exception of the description of the lands and the name of the persons, they are the like? A. Yes sir.

Q. I will ask you, if, in the keeping of the books of the Detroit Timber & Lumber Company, you do not keep an ac-
888 count of the timber cut from each tract of land that you bought. A. No we do not; not where we own the land in fee simple, because it is impossible to do it. The teams would be hauling on one forty and another team would get over the line; but we tried at the end of the month to know

how many acres we cut from and about how much timber we are getting. We never figure on it close enough to know the values of each forty. On a section or two we try to see how close we are coming to our estimate, but it is impossible to keep it correct for each forty.

Q. Have you not stated, in your depositions heretofore, that you kept an account of each tract of land, so that you might be able to determine whether or not you had made anything, or had lost anything on the particular tract in question? A. No sir, I never made any such statement as that.

Q. Is it not a fact that you do keep the books in that way? A. No. On a whole tract we take it for a month or six months coming and keep track of how many feet of logs we cut during the time, and then we can tell how may acres of land we have cut off. We can approximate it that way.

Q. Here is the point, You pay so much for each separate tract of land, it may be large or small. A. Yes sir.

Q. Don't your books show the amount of timber cut from each tract, so that you may determine whether or not you have made or lost, and if so, how much, in the purchase of each tract? A. No sir.

Q. You do not? A. No sir.

(signature waived)

889 Roy McDonald, being duly sworn deposes and says:

Direct Examination

By W. E. Hemmingway, Esq.:

Q. Where do you live now, Mr. McDonald, and where did you live in January 1901? A. Why, I went to Pike City along the latter part of December, or first of January. December 25th I was living in Pike County.

Q. Are you connected with the Detroit Timber & Lumber Company? A. No sir.

Q. Were you connected with the Detroit Timber & Lumber Company in December 1900 and January 1901? A. Yes sir. You asked me if I am still connected with. Yes sir I am still connected with the Detroit Timber & Lumber Company at present. I answered that question wrong.

Q. In what capacity were you connected with the Company then and in what capacity are you connected with it now? A. I was estimating lands, for the buying of lands and timber.

Q. You speak of estimating lands. What do you mean? A. Estimating the timber on the lands, the amount of timber on each forty.

Q. If you went to Pike City in December 1900, tell the date on which you arrived there, and what you went for, and what you did there. A. I got to Pike City on December 25th 1900.

Q. What did you go for? A. I went to look over the lands of the Martin-Alexander Lumber Company.

Q. At whose instance did you go? A. Mr. Clark's.

Q. What was your object in looking over the lands? A. With a view to purchasing them I suppose.

Q. What was the character of the examination of the lands being made by you? To the quality of the land or to the quality and amount of the timber? A. The timber.

Q. Did you make any investigations into the titles of the land? A. No sir none at all.

Q. Did you go there to make any investigation as to the title, or are you simply a timber inspector? A. Well, I didn't go there to look at the titles at all. I just went there to look at the timber.

Q. How did you find out what lands to examine? A. Why they gave me a plat of their lands when we decided to look over them and estimate them.

890 Q. Then you looked at the lands of which you were furnished a list? A. Yes sir.

Q. Did you know at that time how the Martin-Alexander Lumber Company had acquired its claim to the lands, or in what way the lands had been obtained from the government? A. No sir.

Q. Did you know anything about that at all? A. Nothing at all.

Q. Do you remember, after the sale had been made to the Detroit, Timber and Lumber Company, the visit to that country by the agents of the government, Knox and the others? A. Yes sir.

Q. Up to the time that the first of these visits had been made, had you ever heard that there was anything wrong, or that there was a charge of anything wrong in the entry of these lands from the government? A. No sir I don't believe I had.

Q. After the sale by the Martin-Alexander Lumber Company to the Detroit Timber & Lumber Company, the Detroit Company obtained deeds from the people who had given to the Martin-Alexander Lumber Company timber contracts had you anything to do with getting these deeds? A. Yes sir.

Q. Why did you get these deeds? A. Why I was instructed to buy these lands and to get those deeds. It was very much easier to keep track of the timber. If we owned the fee simple we wouldn't have to be scaling it up or making a report of it every week or so to those fellows who owned it.

Q. As I understand it, then, it was to obviate the necessity of keeping separate account of the timber coming from the various tracts? A. Yes sir.

Q. At the time that you got those deeds did you know, or had you ever been told that there was anything wrong in the en-

tries that had been made by the various persons from whom you got the deeds? A. No sir.

Q. Do you know whether or not it was usual for mills, in buying standing timber, to make a cash payment of any considerable amount under the contract, and that the amount paid shall be credited on the timber when it is cut, and the balance paid at the time the timber is cut?

Counsel for the plaintiff objects to the foregoing question on the ground that it is irrelevant, and the answer will not tend to prove or disprove any of the issues in this case?

891

Q. Did you ever see the timber contracts that were delivered to the Detroit Timber & Lumber Company by the Martin-Alexander Lumber Company for these lands in controversy in this suit? A. Yes sir.

Q. Are those contracts such as are generally made by the mill men in the purchase of timber? A. Yes sir.

(Counsel for the plaintiff objects to the foregoing question and answer, on the ground that they are incompetent, irrelevant and immaterial.)

Q. Did you see these contracts before Mr. Clark purchased or afterwards? A. Afterwards.

Q. Did you have anything further to do with making the purchase than to inspect the timber and report the result of your inspection? A. No sir.

Q. You say that you purchased some of the timber lands that were covered by timber contracts. When you took deeds to the lands did you get patents or were there patents given at other times? A. Why, in some cases we got the patents.

Q. When the deeds were delivered to you the patents were delivered with them? A. The patents were delivered afterwards by some parties, and some of the deeds and patents were brought in together and left in the office.

Q. Do you remember during what time you were getting these deeds? A. Why, I am not certain, it was sometime in April, I think, along there.

Q. The dates of the deeds will show the times will they? A. Yes sir, I guess they will.

Q. There is attached to Mr. Clark's deposition a statement showing the dates of the various deeds, showing that they were principally in April and May; most of them in April. Do you think that is the correct time at which the deeds were gotten?

A. It was some time about there. I couldn't say, just for certain, when they were gotten. I know it was in the Spring or summer; along in the early part of the summer.

Q. After the purchase was made from the Detroit Timber & Lumber Company did you make an inspection of timber lands in that country? A. Yes sir.

Q. How long was it after the purchase before you began making this inspection? A. Well, I don't think it was
892 over two or three days.

Q. How long was that inspection continued? A. I think it was continued until very nearly the first of May, before we finished up; or latter part of April.

Q. What lands were covered by your inspection? A. There were a great many lands north of Pike City there, and we inspected township 5-24, 5-25 and 5-26.

Q. Did you inspect all the lands in those townships, or only parts of the lands? A. Well we inspected nearly all, We left out some that was in the mountains, which we didn't look at.

Q. Some that were inaccessible? A. Yes sir, we couldn't get to them.

Q. After your inspection did you know whether or not any of the government land that you inspected was bought by the Detroit Timber & Lumber Company? A. Yes sir.

Q. In what way? A. By scrip, surveyor general Scrip, military bounty, and soldier's additional.

Q. At the time that you were making that inspection, so far as you know, was it ever in contemplation that any of that was to be taken up under the Timber & Stone Act? A. No sir, not that I know of.

Q. How long had you been acting as timber inspector for that Company at that time? A. Well, I don't remember just when I did commence inspecting for them. It was in '95 I guess, or '96.

Q. Had you been doing so ever since that time? A. Off and on ever since that time, as near as I can state it.

Q. Had you ever had anything to do with any entries under the Timber & Stone Act up to that time? A. No sir. I never heard tell of one before.

Q. And when you were making this inspection, so far as you know, it was never contemplated that any of the lands inspected were to be entered under that Act? A. Not that I know anything about.

893 Cross-Examination

By F. A. Youmans, Esq.:

Q. You say, Mr. McDonald, when you were sent down there you were instructed to estimate the amount of timber on certain lands? A. Yes sir.

Q. Who gave you a list of the lands A. I think Mr. Copeland gave me the list; Made it up.

Q. By whom were you directed to make an estimate? A. By Mr. Clark.

Q. President of the Detroit Timber & Lumber Company? A. Yes sir.

Q. Did he furnish you a list of the lands? A. Mr. Clark? No sir.

Q. How were you to get [thier] description? What instructions did he give you with reference to that? A. He didn't give me any instructions with reference to that.

Q. How did you know then what was to be done? A. It was customary when a man went to look over lands to get a plat from the owners.

Q. Did he tell you to do that? A. No sir I don't believe he did.

Q. What did he tell you to do? A. To look at those lands they owned. We couldn't tell what lands they owned until we went down there.

Q. He told you to look at the lands the Martin-Alexander Lumber Company owned? A. Yes sir.

Q. Did he tell you anything about lands they did not own but simply had timber deeds to? A. No sir.

Q. He did not mention anything of the kind? So that, when you went down there you went under [thr] impression that they owned all the lands that it was intended for you to examine? A. Yes sir.

Q. They owned them outright? A. I don't understand that very well.

Q. You said that Mr. Clark instructed you to go down and examine the lands owned by the Martin-Alexander Lumber Company? A. Yes sir.

894 Q. I then asked you whether he said anything to you with regard to the investigation of lands that the Company did not own, but simply held timber deeds on. Now, you stated that he did not give you any instructions with reference to that. Then I asked you whether you went down there under the impression [thay] they owned all the lands that you were to investigate. To that you answered that you did, and then said you did not understand the question. A. Well, I had a plat of what lands they claimed they owned. That is all I looked in of theirs. I looked at other lands while I was there looking at theirs.

Q. But you were not [tild] by either Mr. Clark or by the owners that there was any difference in their ownership? A. No sir.

Q. You supposed that they owned all the lands in regard to which they furnished you a description or a plat? A. Yes sir.

Q. When did you find that they did not own these lands; that is, did not own a fee simple title, but simply had timber

deeds to them? A. Well, I don't remember just when I did find out how that was. It was quite late though. I had nothing to do with those lands until along in the summer time.

Q. You have stated that along in April you got deeds from certain persons for whose lands timber deeds had been given? A. Yes sir.

Q. And you stated the object of obtaining those deeds. Now, when did you first learn that the Company had timber deeds to those lands? A. Well, that was along about that date; sometime in April, or the latter part of March. It might be later. I don't remember.

Q. That was the first time you had any information on that point? A. Yes sir.

Q. You were not instructed then, to make any investigation as to the title? A. No sir, not at all.

Q. All that you had to do up to the latter part of March, or first of April with regard to those lands, was simply to estimate the amount of timber? A. Yes sir.

Q. And nothing more? A. Nothing more. Why, I had a little more to do on other lands, private lands, as we went along.

Q. You understand I am just referring to the lands in controversy, and not to anything else? A. Yes, sir.

895 Q. Do [tou] know whether or not the Detroit Timber & Lumber Company ever made any investigation at all with regard to the title to those lands? A. I Couldn't say.

Q. Was Mr. Clark, or any other officer of the Company, at Pike City while you were there? A. Yes sir.

Q. Who was it? A. Mr. Clark.

Q. You did you say instructed you to obtain these deeds? A. Mr. Clark.

Q. And the object was to avoid the necessity of keeping accounts as to the amount of timber cut from each tract of land? A. Yes sir.

Q. Now as a matter of fact, Mr. McDonald, don't you know that the Detroit Timber & Lumber Company kept an account of timber cut from each tract of land, regardless of whether it had had a timber deed or not? A. No I don't think they did.

Q. You do not think they did? A. No sir. It is pretty hard to keep track of it. You couldn't tell where it came from. They might be cutting on three or four different pieces of land at the same time.

Q. That is true, they might have been cutting on all lands, but don't you know it was their method of book keeping to keep an account of timber taken from each tract of land, regardless of whether it was held by timber deed or otherwise?

A. This land I suppose they did up to this time, I suppose they would.

Q. Don't you know it was their custom [ti] do that subsequent to that time? A. I don't know as I do. I had nothing to do with that part of it.

(Signature Waived)

It is agreed by counsel that all objections as to relevancy and competency are saved and all objections as to form and the manner of forwarding depositions are waived.

* * * * * * * * *

896 Indorsed as follows: No. ——. U. S. Circuit Court, Western District of Arkansas, Texarkana Division. United States vs. Detroit Timber & Lumber Company et al. Depositions of U. L. Clark & Roy McDonald on behalf of defendants. Filed July 31st 1903. John M. Somervell, Clerk. Notary Public Fees $4,00. Paid by Defendants.

897 In the United States Circuit Court for the Western District of Arkansas, Texarkana Division.

United States, Plaintiff,
vs. In Equity.
Detroit Timber & Lumber Co. et al., Defendants.

Depositions of Uriel L. Clark and A. V. Alexander, taken on the 24th, day of November 1902, between the hours of eight o'clock A. M., and five o'clock P. M. at the office of the Detroit Timber & Lumber Company, Room 1203 Fullerton Building, in the City of St. Louis and State of Missouri, by me, Arthur Mooney, a Notary Public within and for the said City and State, to be read in evidence on the part of the defendants in an action between the United States, plaintiff, and the Detroit Timber & Lumber Company et al., defendants, pending in the United States Circuit Court for the Western District of Arkansas, Texarkana Division.

Present, F. A. Youmans, Esq., counsel for plaintiff, and James F. Read, Esq., and T. C. McCrae, Esq., counsel for defendants.

Uriel L. Clark, being first duly sworn and examined on the part of the defendants, deposes and says as follows:

Direct Examination

By Mr. McCrae:

Q. State your name, age, residence and business? A. Uriel L. Clark, age 48, residence, St. Louis, Mo., business, lumber, buying and selling timber land,

Q. Are you connected with the Detroit Timber & Lumber Co., and if so, how long have you been so connected? A. Yes, sir, I am; I have been connected with the Detroit Timber & Lumber Co. since its first organization in 1896. It
898 was then a copartnership, and in 1898 it was incorporated as a stock company. I am president and General Manager.

Q. How long have you been President and General Manager? A. Since its incorporation in 1898. Before that I was General Manager.

Q. Have you a copy of the articles of Association? A. Yes, sir.

Q. Please file them. A. I herewith file a copy of the same as a part of this deposition, marked Exhibit "A".

Q. Who are now, and who were the officers of this company? A. John G. Ferguson of Detroit, Michigan, is Secretary and Treasurer, and has been ever since its organization. Ward B. Clark of Hunters Creek, Michigan, is Vice-President and W. L. Kidd is a Director.

Q. Are these all the stockholders? A. They were up to April 22nd, 1901.

Q. What other persons hold stock in the corporation now, and have since the 22nd, of April 1901? A. A. V. Alexander, I think he calls himself Arch, we always call him A. V.

Q. Can you state whether your company ever purchased the property of the Martin-Alexander Lumber Company, if so, when, and state all the circumstances connected with the sale? A. Sometime between the 15th, and 22nd, of December 1900, Mr. Alexander came to our office in St. Louis, with a plat of lands and mill property in Pike County that he wanted to sell, located at Pike City, Arkansas. After talking the matter over, he outlining what he had in the way of timber lands, I agreed to send Mr. R. McDonald down to Pike City to look over their timber. Mr. McDonald left here December 24th, 1900, and arrived at Pike City, December 25th, and began to examine their lands and timber, and after he made a report he wrote me several letters requesting me to come down. I think it was on the evening of the 9th, of January, 1901,
899 that I left here and went down to Pike City. Mr. McDonald was then in the woods and did not return until the following Saturday evening. On my arrival at Pike City I began looking over the plant, the lumber and tram roads, and went out into the timber as far as the tram roads went and then rode on horse back over their lands adjoining the end of the tram roads until Saturday. The Martin-Alexander Lumber Co., furnished me a statement of the trial balance of their books. Mr. McDonald arrived Saturday night and he and I went to his room at the hotel and we there went over his es-

timate of the timber on the lands that the Martin-Alexander Lumber Co., had given us the plats of. We staid there together until nearly twelve o'clock, I think it was, talking over the situation, the country, the cost of logging etc., and different matters relative to their lands. On Monday, I think it was Monday, Mr. Martin and Mr. Alexander, went down to Mr. Alexander's house with me, I having plats of their lands, Mr. Martin, I think, was the one that called off the description of the lands that they had deeds to, both in fee simple and timber deeds, and I checked them on the plat they had furnished me of their lands. After figuring over from their trial balance, I figured up their property was worth a certain amount, $60,000, and I went to the office of the Martin-Alexander Lumber Co. and asked for a sheet of paper; I wrote on that sheet of paper my proposition to Mr. Martin, who was the only one that was in the office at that time outside of their clerks who were in an adjoining room; I offered him $35,000 for his interest, he looked at the piece of paper, smiled and said, "Mr. Clark, if we trade it will be at the price I have quoted, which is $37,000 and not one dollar less;" I told him that was just the way I liked to hear a man talk, that the price I had offered him was all I would give, and I left the office and went down to the mill and Mr. Alexander came up to me and wanted to know what I
900 had done. I told him the deal was off. While we stood there talking Mr. Martin came down and he said he had been thinking the matter over and if I would split the difference with him he would make the trade. I told him I would not do that, that I would not give him a dollar more than I had offered, and was not very particular whether he traded either. As Mr. McDonald had about 400 acres yet to estimate Monday Morning, I told him that perhaps when Mr. McDonald's estimate came in on the balance of the land that I would not want it even at that price. Then he wanted me to give him $35,000. I told him that I would not do that, and he finally said, "How do you want to pay for it," I said, "if we trade I will pay cash for it;" He said "all right, we will make a trade," and he said, "how will we fix this matter up," I told him I didn't hardly know, and finally it was decided,—

Q. I will ask you this question, did you have any understanding with Mr. Alexander prior to this about acquiring his interest in the event you bought Mr. Martin's, if so, state what it was? A. I forgot to mention it, Before I came to any agreement with Mr. Martin I told Mr. Alexander that the Detroit Timber & Lumber Co. would not buy Mr. Martin's interest without they bought out the whole business, and Mr. Alexander agreed,—it was agreed with me that whatever price was paid Mr. Martin for his interest he would take pro rata for his.

He stated that he preferred not to sell out, that he would like to retain his interest, I told him that the Detroit Timber & Lumber Co., would not be in partnership with anybody. He then remarked that he would rather take what was coming to him in stock in our company than take cash. I told him that was a matter I could not promise him as all the stock in the Detorit Timber & Lumber Co. was owned by the four people interested in it, and there was no stock for sale, but we might increase the capital stock, and if we did he might get some stock
901 for his $25,000.

Q. So when you agreed with Mr. Martin as to his price, you knew what you could buy the other interest for? A. Yes, sir, when I agreed with Mr. Martin I knew just then what the whole plant would cost us.

Q. What was the aggregate value of the two interests? A. I figured the whole business at $60,000.

Q. Mr. Martin's you say, was $35,000? A. $35,000. Mr. Martin had a certain per centage,—if I remember right, Mr. Alexander's interest was 41-1/2%, and Mr. Martin's was 58-1/2%, 41-1/2% and 58-1/2%.

Q. Now you can go ahead with the statement you were about to make as to what you did in that case? A. Mr. Martin, Mr. Alexander and myself went up to the hotel. He went and got his stock book and went to the room, he called a meeting of the Martin-Alexander Lumber Co., and he resigned his position as President and I was elected President temporarily to wind up the business of the Martin-Alexander Lumber Co. He transferred his stock over to our company. I gave Mr. E. B. Martin a check that day for $27,456.79.

By Mr. Youmans:

Q. Were minutes kept of that meeting? A. They made some record in that minute book.

Q. Do you know where that minute book is? A. No, sir, I have never seen it since, I never had it in my hand.

Plaintiff's counsel object to the statement of the witness with regard to the election of President for the reason that the minutes of the stockholder's meeting are the best evidence.

The Witness: I gave Mr. Martin a check of the Detroit Timber & Lumber Company, No. 834, on the Union Trust Company of St. Louis for $27,456.79, I also came on to St. Louis, with Mr. Martin, and went over to the vault of the Lincoln
902 Trust Company, where we have a safe deposit box, and gave him a note that the Detroit Timber & Lumber Company got from the Bodcaw Lumber Co. of Stamps, Arkansas, for $25,000, the date of the note was April 12th, 1900, drawing 6% interest. Mr. Martin gave me a check back for the accrued

interest on the note up to January 14th, 1901, of $1113.32, making the total amount paid Mr. Martin for his interest, and, also, for $17,456.79 that the Martin-Alexander Lumber Co. owed him on account, making the total I paid Mr. Martin that day in this transaction $52,456.79.

Q. Have you the check? A. Yes, sir, this is the paid check and I file it as a part of this deposition as Exhibit "B".

Q. Have you the note? A. No, I have not the note.

Q. The note was given to you by the Bodcaw Lumber Co. and transferred by the Detroit Timber & Lumber Co. to Mr. Martin? A. Yes, sir.

Q. Of course when paid, the Bodcaw Lumber Co., got the note and not you? A. Yes, sir, when I delivered the note to Mr. Martin we had to guarantee it, endorse it.

Q. The note was the property of the Detroit Timber & Lumber Co.? A. Yes, sir.

Q. And the purchase of the mill was for the Detroit Timber & Lumber Co.? A. The entire purchase was made for the Detroit Timber & Lumber Co.

Q. Go ahead? A. After I had settled with Mr. Martin, I notified the balance of our company of the deal that I had made. We called a meeting of the Detroit Timber & Lumber Co. in Detorit, Michigan, on the 12th day of February, 1901, and here is our record book and a copy of the proceedings
903 acted upon at that time with a view of increasing the capital stock of the Detroit Timber & Lumber Co. from $40,000 to $140,000. I file herewith as a part of this deposition a copy of the minutes of that meeting marked Exhibit "C".

Q. What was next done? A. The Secretary was instructed to take the necessary steps to increase the capital stock, and on the 22nd day of April 1901, we had another meeting, a special meeting of stockholders of the Detroit Timber & Lumber Co. which was held at the office of the company in the City of St. Louis, Mo. The minutes of said meeting are as follows: "pursuant to notice to each stockholder, all the stockholders of said company were present at said meeting either in person or by proxy.

The proper legal steps having been taken for the increase of the capital stock of this company, the application of A V Alexander for stock in this company at par, for the amount of Twenty Five Thousand Dollars due him and his wife, B M Alexander, was taken up for consideration. The following resolution was adopted, all the stock voting therefor. Resolved, that in payment of Twenty-Five Thousand Dollars due A V Alexander, and his wife, that Twenty Five Thousand shares of this company be issued by the President and Secretary to A. V. Alexander.

"Resolved, further, that the additional Seventy-Five Thousand Dollars of stock now authorized be issued by the President and Secretary as follows:

To U L Clark	$37,500.00
To John G Furgeson	22,500.00
To Ward B Clark	10,500.00
To W L Kidd	4.500.00

There being no furtaer business the meeting was adjourned.

John G. Ferguson, Secretary."

Q. Have you a copy of the amendment to the Articles of Association? A. Yes, sir.

904 Q. Where is it? A. It is attached to Exhibit "A" of this deposition, and is a part of it.

Q. So then, I understand from your statement, that when you agreed with Mr. Martin as to the price, you understood what the whole plant would cost, that it was $60,000, that you paid him for his interest and for what the concern owed him, in cash and in a note that belonged to the Detroit Timber & Lumber Co. and by the proceeding you have detailed here you gave Mr. Alexander $25,000 in stock in the company for his interest in that land? A. Yes, sir.

Q. Prior to that time and pending the application of Mr. Alexander for stock in your company was there any agreement in writing between you and Mr. Alexander or between you and the company in relation to that matter and, if so, have you that agreement? A. Yes, sir, there was. I file herewith as a part of this deposition a copy of that agreement, marked Exhibit "D".

Q. Was that stock issued to Mr. Alexander? A. Yes, sir.

Q. When? A. The 22nd day of April, 1901, the full amount was issued to Mr. Alexander.

Q. You have spoken of a trial balance and statement of assets as the basis of your trade at Pike City, have you that trial balance and statement? A. Yes, sir, and file them as a part of this deposition marked Exhibit "E".

Q. State what acquaintance, if any, you had in Pike County prior to the time these negotiations began? A. I never had any acquaintance in Pike County, was never there.

Q. What acquaintance, if any, had you with Mr. Martin and Mr. Alexander? A. I think I had only met Mr. Martin two, and possibly three times, and Mr. Alexander about the same number of times. I never met either one of them

905 only two or three times.

Q. When did you first know they had any property in Pike County? A. I think it was in 1899. I knew they were doing business down there, the Martin-Alexander Lumber

Company, because our company had bought one or two cars of lumber from them; that is the only way I knew, from invoice dated Pike City.

Q. When did you first know the extent of their holdings there? A. Not until Mr. Alexander gave me the plat of land in his office, told me how much they had, that was in December between the 15th, and the 22nd, 1900.

Q. What was Mr. Alexander's object in coming to you at that time?

Plaintiff's counsel objects.

Q. Did Mr. Alexander state his object in coming to you? A. Yes, sir, he wanted to make a sale of their property.

Q. Did you know prior to that time that the property was for sale? A. No, sir.

Q. And the first intimation that you had that the property was for sale was when Mr. Alexander came to you and showed you the plat of the lands and told you the character of the mill and store he had? A. Yes, sir, that was in December 1900.

Q. You have stated the time that was required to make the examination and how you closed up the trade. Now, please state what, if anything, was said about how the lands they had owned in fee simple and the lands for which they had timber contracts had been acquired by them? A. There was never anything said about that, how the parties they bought land from had acquired the title.

Q. You have stated you caused an examination of the lands to be made with a view of ascertaining the amount of timber upon them and the examination of the trial balance to ascertain how much was invested in it and when those in-
906 vestments were completed you were prepared to make a proposition and did so? A. Yes, sir.

By Mr. Read:

Q. When Mr. Alexander first approached you in your office in December 1900, and showed you a plat of the lands, etc., did he make you any price on the property at that time? A. I think he did. He had his trial balance. There is the statement he had made up of his total assets and liabilities, (referring to Exhibit "E".)

Q. He had that exhibit with him? A. Yes, sir.

Q. And showed it to you? A. Yes, sir, showed it to me.

Q. Do you remember what offer he made you, what price he put upon the property, if any? Did he make you a price at that time? A. I think he made the price that Mr. Martin would sell his interest for $37,000 or $37,500 I forget now.

Q. What business was the Detroit Timber & Lumber Co. engaged in at that time? A. It was handling lumber in a jobbing way and dealing in timber lands.

Q. When the proposition came to you from Mr. Alexander what was the first thing that you did after that? A. Sent our man Mr. McDonald down to look at the timber.

Q. For what purpose? A. To ascertain if they had anything our company would want to buy.

Q. What duties did Mr. McDonald perform at that time with reference to your company? A. He was a timber estimator.

Q. What are the duties of an estimator? A. To examine the land and see how much timber is on it.

Q. Then the first step you took was to send Mr. McDonald down to examine the land and estimate the amount of timber on it? A. Yes, sir.

907 Q. How long after that was it before you went down in person? A. He went down on December 24th, and I went there I think, on the 9th, of January. I had several letters from Mr. McDonald that he wrote me at different times, outlining the country and the character of timber and urging me to come down and look it over.

Q. Was Mr. McDonald's report favorable or unfavorable?

Plaintiff's counsel objects to the question, first, on the ground that the report will show for itself if admissible, and, secondly that the testimony is hearsay.

A. It was favorable.

Q. When was it you went down yourself? A. I think it was the evening of January 9th, 1901.

Q. Did Mr. McDonald ever make you a written report showing the amount of timber standing on the lands? A. Yes, sir.

Q. Have you that report? A. I have.

Q. I wish you would file that report with your deposition as an exhibit and explain the character of it in your answer and state also from that report the amount of timber estimated as standing on the land your company bought from the Martin-Alexander Lumber Company?

Plaintiff's counsel objects to the report and the testimony based thereon on the ground that they are hearsay.

A. This is a written report made up by Mr. McDonald which I file as part of the deposition marked Exhibit "F", a report of the standing timber on all of the lands owned in fee simple and by timber deeds of the Martin-Alexander Lumber Co. up to January 14th, 1901—30,715,000 feet he reports as standing.

Q. Did you have that report made to you prior to the time that you made the deal for this property? A. Yes, sir, I had his report with the exception of 300 or 400 acres added
908 in afterwards, which came in the next day. He had over 28,000,000 Saturday night and Sunday when he and I were talking it over.

Q. You state that prior to the time you went to Pike City you had received letters from Mr. McDonald relative to this property; have you got those letters? A. Yes, sir.

Q. Will you file them with your deposition as a part of your deposition? A. Yes, sir.

The witness produces a number of letters, which are marked Exhibits G 1, G 2, G 3, G 4, G 5, G 6, G 7, G 8, G 9, G 10, G 11, G 12, and G 13, and hereto attached.

Plaintiff's counsel objects to the letters.

Q. In making this trade and the investigation that [preceeded] it who were you and Mr. McDonald representing? A. The Detroit Timber & Lumber Company.

Q. What was your proposition to Mr. Alexander or Mr. Martin with reference to purchasing the property down there? A. I told Mr. Alexander after looking the plant over that the Detroit Timber & Lumber Company would not buy Mr. Martin's interest separately, that if they bought any, they would buy all they had, and Mr. Alexander agreed that whatever price I made with Mr. Martin he would let his go on the same pro rata. There was never one word said about stock with me and Mr. Alexander or Mr. Martin, about buying their stock, it was buying out the property.

Q. Why was it that you took the stock of Mr. Martin? A. We did not know of any other way to make the transfer to take effect then, to consum-ate the deal.

Q. Was there any reason why Mr. Martin should? A. Mr. Martin was anxious to sell out, if he sold out he wanted to leave the country at once.

Q. Why was it you were elected President of the Martin-Alexander Lumber Co.? A. To wind up the business of the Martin-Alexander Lumber Co.

909 Q. Was it expected at that time that that should be a permanent or a temporary arrangement? A. Just a temporary arrangement.

Q. How long after that was it before the affairs of the Martin-Alexander Lumber Co. were wound up? A. I cannot answer just how long, it took quite a little time to get all the old accounts collected, but the business was settled, I think it was in March.

Q. In March of the year 1901? A. Yes, sir, March or April.

Q. Was there any stipulation made by Mr. Martin or any one else connected with the trade, relative to the time in which the affairs should be wound up? A. It was agreed with Mr. Martin that we would not continue the name of the Martin-Alexander Lumber Co. any longer than possible, just to wind up its affairs, he was very particular about that, and I assured him that we would not.

Q. When you got to Pike City what was the first thing you did there after you got to Pike City in January 1901? A. The first thing I did was to go right over the mill plant, I looked at the planing mill and saw mill and lumber yard, and then went out over the tram road and examined everything they had in general.

Q. What character of examination did you personally make of their property? A. I examined personally the plant, and lumber and tram road.

Q. Are you familiar with the value of such property? A. Yes, sir, I think so.

Q. How long have you been engaged in the business in which you are now engaged? A. I started in manufacturing lumber thirty years ago, when I was eighteen years old.

Q. What was the object in having Mr. McDonald examine the timber upon the land, and what was your object in going there personally to examine the plant? A. My object in having Mr. McDonald examine the land was to know
910 how much timber they had, and my object in going there was, that if they had timber enough to justify us we would make the purchase. We were in that business.

Q. Did your knowledge with reference to such matters enable you to form an estimate of the value of that plant? A. Yes, sir, reasonably so.

Q. State whether or not the price you paid for the property of the Martin-Alexander Lumber Co. was a reasonable price for the property? A. Yes, sir, I consider I paid full value for it.

Q. After you had made an agreement with Mr. Martin as to what he would take for his interest in the property, I believe you stated in your examination that you then sat down and went over with him the properties he had, the timber contracts he had, as well as deeds to property, did you not? A. Yes, sir, they read them over and I checked them on the plat,

Q. Did you have at that time a plat of the property before you? A. Yes, sir.

Q. Who read them over to you? A. I think it was Mr. Martin.

Q. Did you make any examination of the title that they had to this property? A. Not particularly; they said the titles were good, perfect.

Q. Did they have timber contracts and deeds there on hand at that time? A. Yes, sir, they had deeds and contracts for all except the two Moran's and Dorsey's.

Q. What became of the timber contracts and deeds? A. That they turned over.

Q. Did they turn them over to you? A. Yes, sir, you have reference to the lands in dispute or all of them?

Q. All of them? A. We have all of them except the contracts that were returned to the parties that we bought the lands of in fee simple. We returned them the timber contracts.

911 Q. Did you ever procure the fee simple title to these lands in controversy? A. A part of them.

Q. When was it you procured those fee simple titles? A. I think it was in April and the fore part of May 1901.

Q. Where are those deeds? A. They are here, I have them.

Q. Will you have those deeds present at the trial of this case? A. Yes, sir.

Q. What became of the timber contracts? A. I have them.

Q. All of them? A. All except those that were returned back to the parties we got the fee simple deeds from.

Q. When you got the fee simple deeds what became of the contracts? A. I think they were surrendered back to the parties who gave them.

Q. Why was it you procured the fee simple deeds instead of holding the contracts? A. For the reason that most of their contracts, nearly all of them, were on a fifty cent stumpage basis and we were to keep track of the timber cut and pay fifty cents stumpage. I didn't like the fifty cent stumpage because it caused the annoyance and trouble of keeping account of the logs cut off of the land; I preferred to own the land in fee simple to avoid making reports to different parties.

Q. Well, now, when did you commence, if you remember, taking those deeds to the Detroit Timber & Lumber Co., was it before or after the affairs of the Martin-Alexander Lumber Co. had been wound up? A. The Detroit Timber & Lumber Co. commenced buying the land right after January 14th.

Q. Before the affairs of the Martin-Alexander Lumber Co. were wound up? A. Yes, sir.

Q. All the deeds then were taken in the name of the
912 Detroit Timber & Lumber Co.? A. Yes, sir there never was a deed taken in the name of the Martin-Alexander Lumber Co. after January 14th. There never was any business

done in the name of the Martin-Alexander Lumber Co. after we bought in there, the company's affairs were wound up as fast as they could be.

Q. At the time you purchased the interests of Mr. Martin and Mr. Alexander, or the Martin-Alexander Lumber Co., in these lands in controversy, what information did you have as to the source of title that these people held for their lands, or the lands in controversy? A. I did not have any.

Q. Did you know at that time they had bought under the Timber and Stone Act? A. No, sir.

Q. When did you first learn that fact? A. I do not remember just exactly. The first I ever heard there was any trouble about any of them was the latter part of September or first of October, at the time Mr. Schlierholtz came down.

Q. What year? A. 1901,

Q. Had you prior to that time known or suspected that there was any defect in the title to the property? A. No, sir, not the least in the world,

Q. Do I understand you to state then that in September or October 1901, was the first time you ever heard that there was any question as to the legality of the title? A. Yes, sir, that was the first time.

Q. From whom did you first obtain your information, or through whom? A. I think I got a letter from Mr. Alexander that a Special Agent of the Government was over here looking in regard to some titles of land, but he did not outline anything about it. When I got there Mr. Schlierholtz gave me the full information,

913 Q. Why was it that you were willing to take Mr. Martin's and Mr. Alexander's statement in reference to the title to the property? A. Well, I consider them good, reputable citizens and reliable men, and the timber they had was only enough to keep the mill going three years; I didn't think it was necessary to go into abstracts, etc.,

Q. You were willing to rely on their statements? A. Yes, sir, and every title we did get from them with the exception of the land in dispute now, has been just as they said it was,

Q. Did they have timber contracts for all of the land they professed to own there, or deeds for all of it? A. Except the Moran and Dorsey land,

Q. You saw all the timber contracts and deeds at the time you made the deal? A. Yes, sir, I did not read every one, I read very few of them. Then Mr. Martin called them off, gave a description and I checked them on the plat.

Q. What connection did Mr. Alexander have with the Detroit Timber & Lumber Co. or with the Martin-Alexander Lumber Co. at Pike City after you had closed the deal with him and Mr. Martin for the properties down there? A. Mr. Alexander

was to just remain there for the Detroit Timber and Lumber Co. to manage the business until the transfer was completed.

Q. After the purchase of Mr. Martin's interest who managed the business down there? A. Mr. Alexander.

Q. For whom? A. For the Detorit Timber & Lumber Co.

Q. Do I understand from you that after the purchase from Mr. Martin, although the Martin-Alexander Lumber Co. was in existence, the Detroit Timber & Lumber Co. took charge of affairs there? A. Yes, sir, we only run the Martin-Alexander Lumber Co., in the name of the Martin-Alexander Lumber Co., long enough to wind the business of the concern up.

914 Q. What I wanted to know was this: after the interest of Mr. Martin had been purchased by you, did the Martin-Alexander Lumber Co. continue to manage the business so far as the manufacture of lumber was concerned or not? A. The business ran along the same as the Martin-Alexander Lumber Co. until we made the transfer.

Q. It run, you say, under the name of the Martin-Alexander Lumber Co. until you made the transfer? A. Yes, sir.

Q. How long was that? A. I think it was in March.

Q. Who, in fact, was the owner of the business at that time? A. The Detroit Timber & Lumber Co.

Q. Who employed the men down there after that time, and paid them? A. They were paid out of the business down there.

Q. Now, was Mr. Alexander at any time, Secretary of the Detroit Timber & Lumber Co.? A. No, only I appointed him as Secretary to sign vouchers in paying the bills.

Q. Where? A. In Pike City.

Q. Did Mr. Alexander have any control over the management of any other part of the affairs of the Detroit Timber & Lumber Co. outside of Pike City? A. No, all he had charge of was the mill and tram road.

Q. Why was he called secretary? A. We paid all of our bills by vouchers, there was not anything paid by check. The vouchers came here for me to sign. Those vouchers were made after a copy of the St. Louis Refrigerator & Wooden Gutter Company's vouchers. In one place there was a place for the Secretary to sign. Mr. Alexander, I told him to sign them. When they owed a bill of goods the bookkeeper entered them and Mr. Alexander signed as secretary and I signed as president and sent it to the customers from this office.

915 Q. I wish you would state as definitely and as fully as you can all the duties Mr. Alexander had to perform at Pike City after you had purchased the interest of the Martin-Alexander Lumber Co., or Mr. Martin down there? A. His duty was to look after the manufacture of lumber, getting

in logs, attending to shipping orders sent to him from this office, and looking after the commissary.

Q. Now what else with reference to the vouchers? A. And he signed those vouchers and the vouchers came up here for my signature, and they were sent out to whoever they were payable to from this office.

Q. Did he have any other duties to perform than those you have just stated? A. No, sir.

Q. Did he have any other connection with the Detroit Timber & Lumber Co. except that that you have just stated? A. No, sir.

Q. Then who was at that time secretary of the Detroit Timber & Lumber Co.? A. John G. Ferguson was secretary. Mr. Ferguson has been secretary since it was incorporated, and is secretary to this day, elected by the Board of Directors.

Q. Why was it you increased the capital stock of the Detroit Timber & Lumber Co. from $40,000 to $140,000, explain fully? A. Our company was carrying a surplus of $60,000 and I had invested all of this in the Martin-Alexander Co's plant, and it was necessary to have our capital increased to give us more capital to invest in timber lands; also, because we were going to let Mr. Alexander have $25,000 stock in the company, and I put in $15,000 more making the total capital $140,000.

Q. Did that represent the actual assets of the company? A. Yes, sir.

Q. Did Mr. Alexander understand this increase in capital stock? A. Yes, sir, he did.

Q. What was the actual value of the stock Mr. Alexander got? A. Par,—100 cents on the dollar.

916 Cross-Examination,

By Mr. Youmans:

Q. You state that your first knowledge of the Martin-Alexander Lumber Co. came through an interview with Mr. Alexander in December 1900? A. My first knowledge that they wanted to sell their plant was at that time.

Q. You sent your representative down there to make an examination of the timber? A. Yes, sir.

Q. Upon his reports you went down yourself? A. Yes, sir.

Q. They represented to you a trial balance? A. Showing the condition of their business.

Q. Giving assets and liabilities? A. Yes, sir, the amount they had invested in timber lands.

Q. They gave you for your investigation fee simple deeds and timber contracts? A. They read them over and I checked them on the plat to see if they had deeds to the land they gave us a plat of.

Q. You say you made no investigation as to the titles of any lands? A. As to how the people got the titles I took their word for it, they said their titles were all good.

Q. Did they tell you that any of the titles were derived from the Government? A. No, they did not.

Q. Did you make no inquiry at all as to the sources of their title beyond what the deeds themselves showed? A. No, sir.

Q. Is that a customary method of doing business so far as your company is concerned? A. It is in a deal of that character.

Q. Was not that a pretty large deal involving some $60,000? A. We were only paying $17,000 and some odd for the timber.

Q. But the entire deal involved $60,000 and now you say only $17,000 of that involved timber? A. Yes, sir, that
917 is what the trial balance showed, between $17,000 and $18,000.

Q. But their lands were worth something more, were they not, outside of the value of the timber growing on them? A. I presume so, yes.

Q. How much more were they worth? A. They did not have so very many deeds to land in fee simple, I forget the number of acres they did have.

Q. I understood you to say you made the purchase which involved, according to your estimate, $17,000 and whatever the lands were worth over and above that without making any investigation in regard to the title other than to ask them their statement? A. On their statement that their title was perfect, that the people whom they had timber deeds from had a good title to their lands.

Q. Did you make any inquiry as to whether or not their titles were derived from the Government? A. No, I did not, of course, I knew that all these lands came from the Government some time.

Q. But as to whether or not they had been recently derived from the Government or at some considerable time back, you made no inquiry? A. No, I think they stated that all the people they dealt with had final receipts or patents for their land.

Q. What was the occasion for that statement? A. I do not know that there was any particular reason for it.

Q. Had you made no inquiry as to whether they had been obtained from the Government or not? A. No, I had not.

Q. You do not know why they came to make that statement then? A. No, I don't, I asked them if their titles were all right, and they said they were, that the titles were perfect.

Q. But they did not say that all of them had final receipts? A. They said that all of the people had final receipts or patents for the land.

Q. You did not make any inquiries as to whether the lands were obtained as homesteads or in any other manner? A. No, I didn't, I always calculated the title was all right if the party had a final receipt.

Q. You did not make any inquiry then as to whether they had a final receipt? A. I don't know that I asked them. That conversation passed. They [did] they had them.

Q. You did not inquire for the final receipts? A. No, sir, I did not.

Q. But the statement was made without any inquiry from you that patents had either been issued or final receipts issued? A. I asked them if their titles were perfect, how they were, and they stated the titles were perfect, so I did not care anything about it.

Q. You did not know whether the statement in regard to the issuance of final receipts or patents was in that connection or not? A. It has been a long time ago, it is hard to remember how the conversation came up.

Q. Did you know at that time how titles to government lands could be acquired in the State of Arkansas? A. All I knew about it was under the homestead act, I had known about them for some time.

Q. Did you understand then that the statement made there in regard to final receipts was made in reference to entries under the homestead act? A. I didn't know whether it was or not, I supposed so, I didn't know it.

Q. Now, a trial balance was shown you which was a statement itemized as to assets and liabilities? A. Yes, sir.

Q. Upon that you made an offer? A. I took their trial balance and figured up what they had in lumber, approximated their store and tram roads, etc., I deducted, I think, nearly $30,000, $29,000 off of their statements of what they
919 showed for profits, I cut it out for shrinkage on the tram roads, property, the store, bad accounts that might come up.

Q. You made an offer then to Mr. Martin of $35,000 for his interest? A. Yes, sir.

Q. You knew that the Martin-Alexander Lumber Co., was a corporation? A. Yes, sir.

Q. You knew that Mr. Martin's interest was evidenced by his stock in the concern? A. I supposed so.

Q. You knew it as a matter of fact? A. Certainly I knew that.

Q. You knew you would acquire, if you did at all, Mr. Martin's interest, by an assignment or transfer of his stock? A. The thought had not come to me at that time how we would make the transfer.

Q. Didn't you know that the only way you could get his interest was by an assignment or transfer of his stock? A. I think if we had not taken under consideration letting Mr. Alexander have $25,000 of stock, that the transfer would have been a deed from the Martin-Alexander Lumber Co. direct to the Detroit Timber & Lumber Co., right at that time I would never have been elected president and the stock assigned over at all.

Q. Leaving out of consideration all question as to how it might have been, the fact is you acquired for the Detroit Timbber & Lumber Co. Mr. Martin's stock in the Martin-Alexander Lumber Co.? A. Yes, sir.

Q. Thereupon you were elected president of the Martin-Alexander Lumber Co.? A. Yes, sir.

Q. The Detroit Timber & Lumber Co. then became a stockholder in the Martin-Alexander Lumber Co., or did you? A. Just temporarily. I understood I could not go out for
920 the Detroit Timber & Lumber Co. and buy stock, I could not use money that way. This was done to consum-ate the trade.

Q. Did you become a stockholder in the Martin-Alexander Lumber Co., or did the Detroit Timber & Lumber Co.? A. A part of the stock was in the Detroit Timber & Lumber Co. and part went to me.

Q. How much went to you? A. A small amount.

Q. The greater portion went to the Detroit Timber & Lumber Co.? A. Yes, sir.

Q. Mr. Alexander and his wife still held stock in the Martin-Alexander Lumber Co.? A. Still held their stock, yes, sir.

Q. Afterwards the Detroit Timber & Lumber Co. at a stockholder's meeting authorized an increase of stock in that concern from $40,000 to $140,000? A. Yes, sir.

Q. Then there was some kind of a transaction or minutes made by which the Martin-Alexander Lumber Co. sold out to the Detroit Timber & Lumber Co.? A. That was made before that. Just as soon as we got the proper papers from Lansing, Michigan, where we had to make out application, just as soon as we got them we called a meeeting and issued stock, and the stock of the Martin-Alexander Lumber Co. was cancelled.

Q. This agreement purporting to have been signed by the Martin-Alexander Lumber Co. by you as president, and the Detroit Timber & Lumber Co. by you as president, of date the first of March 1901 conveys the plant of the Martin-Alexander Lumber Co. to the Detroit Timber & Lumber Co.? A. That is just a contract written up to carry out the agreement that Mr. Alexander and I had before I bought out Mr. Martin.

Q. Was this contract ever authorized by the stockholder's meeting of the Martin-Alexander Lumber Co.? A. After I came into the Martin-Alexander Lumber Co. they never had

any meeting that I recollect of, I went ahead and wound up the business of the Martin-Alexander Lumber Co. and
921 the stock was all cancelled.

Q. This contract or agreement then was never authorized by any stockholders' meeeting of the Martin-Alexander Lumber Co.? A. Only Mr. Alexander and myself, and the Detroit Timber & Lumber Co., were interested in it.

Q. Mrs. Alexander was interested to a greater extent than Mr. Alexander was? A. That was all in the family.

Q. But as far as the corporation was concerned it was separate and distinct, Mr. and Mrs. Alexander? A. I do not know anything about that.

Q. Don't you know that on the books of the concern so much stock stood in the name of Mrs. Alexander, and so much in the name of Mr. Alexander? A. I did not know at the time I bought Mr. Alexander out, that any was in Mrs. Alexander's name.

Q. You found it out afterwards? A. When the stock was surrendered and cancelled then I knew.

Q. What I am trying to get at is the fact that that instrument termed a contract of sale entered into the first day of March 1901, between the Martin-Alexander Lumber Co. and the Detroit Timber & Lumber Co. was never authorized by a stockholders' meeting of the Martin-Alexander Lumber Co.? A. Well, I don't know just how you would construe that.

Q. The minutes of the Martin-Alexander Lumber Co. would show if there were any in existence? A. I should think so.

Q. Now did you ever have any such minutes, or hold any such meeting? A. I never saw the record book.

Q. This appears to have been acknowledged on the second day of May, 1901? A. The second day of May?

Q. Yes. A. I don't think that is right, I think that agreement was made in March.

922 Mr. Read: The contract is dated in March, the acknowledgement was in May.

By Mr. Youmans:

Q. It was executed by you as president of both companies? A. Yes, sir.

Q. Now, when did the Martin-Alexander Lumber Co. cease to do business? A. It was either in March or April, somewheres along there.

Q. When did you begin buying lands from the parties from whom the Martin-Alexander Lumber Co., had taken timber deeds? A. I think it was somewhere about the first of April, it might have been a little earlier than that.

Q. 1901? A. Yes, sir.

Q. Did you make any investigation of the title at that time? A. I did not, I was not there.

Q. Regardless of whether you were there or not, did you make any investigation of the titles before you bought any of these lands? A. Whenever we made a purchase of any fee simple deeds, when the deed came up here the patent came up with it.

Q. Did you make any investigation before you made the purchase as to whether or not a patent had been issued? A. I did not personally.

Q. Who represented you in securing the deeds? A. Mr. McDonald.

Q. So the matter then of securing the deeds was left to him? A. Yes, sir.

Q. Where is Mr. McDonald now? A. He is at Hot Springs.

Q. You do not know whether he made any investigation of the title or not? A. All I know is that he sent the patents along with the deeds.

Q. That is all you know about it? A. Yes, sir, that is the way he generally does. Outside in any place we have done business, he would make out the deeds and then he would send them up, he would have all the papers, the patents,
923 relative to the land.

Q. Did he investigate the title before he made the purchase? A. I think he knew those people had the patents.

Q. Do you know whether or not he had the receiver's receipts? A. I don't know, but I am satisfied he never did.

Q. You say you began the purchase of these lands in April, 1901? or he did for you? A. I think that is about the first he purchased. He commenced buying the right of way for the Detroit Timber & Lumber Co. right away after we bought in there.

Q. You have all the patents and deeds? A. I have all the patents for deeds we have got in fee simple.

Q. You will have these patents and deeds at the hearing? A. Yes, sir.

Q. I will ask you to attach [—] this deposition a statement showing the dates of each of the deeds obtained by you? A. I will do so.

The paper produced by the witness is marked Exhibit "H" and hereto attached.

Q. I believe you made a statement as to the value of the lands in controversy in this suit, when your deposition was taken at Texarkana in behalf of the complainant? A. I do not think I made any statement in regard to the value of the lands in this civil suit.

Q. Perhaps I am mistaken, in a case on trial at Texarkana, I believe it was, that you made a statement as to the value of the lands? A. Something of that kind.

Q. As independent of the timber that grew on the lands. If I remember correctly, you said that the separate tracts of land covered by timber deeds were worth from $25 to $80 a tract? A. No, I told you that is what we paid for them.

Q. Did you not state that you paid all that they were worth? A. I don't think I did.

Q. I will ask you now to state what those lands are
924 worth independent of the timber that was on them? A. That is a hard matter for me to say, I could not say what they were worth outside of the timber.

Q. You say you cannot state? A. It is a hard matter to state what they would be worth.

Q. What were they worth at the time your purchased them? A. Well, they were worth,—it was more advantage to us to have them in fee simple, we wanted to do away with the stumpage, keeping track of the timber cut.

Q. Of course I may be mistaken but my recollection of it was that you stated that those amounts that you paid were the full value of the land at the time? A. I do not recollect making such a statement. I told you that the price we paid was from $25 to $80 for a tract.

Q. You say now you are not able to say what those lands were worth at the time you purchased them without the timber? A. It would be a hard matter for a man to say just what they would sell for.

Q. They were chiefly valuable for timber were they not? A. Yes, sir, there are no agricultural lands down there that I have ever seen.

Q. When did the Martin-Alexander Lumber Co. cease to do business? A. Do you mean when their name went out of existence at Pike City or how?

Q. Perhaps this will get at it better: When, in the conduct of that business, did you cease to use the name of the Martin-Alexander Lumber Co? A. It was either in March or April.

Q. 1901? A. 1901, yes, sir.

Q. Did you verify the trial balance given you by Mr. Martin and Mr. Alexander by looking over the books? A. No. Mr. Rowe their bookkeeper assured me the trial balance was correct according to their books. I never had anything to do with their books.

Redirect Examination

925 By Mr. Read:

Q. In this connection it was stated by you in your examination that the amount paid to Mr. Martin was $52,000 and something? A. Yes, sir.

Q. You estimated his interest was worth $35,000? A. Yes, sir.

Q. Why was it, you paid him $52,000? A. Because the Martin-Alexander Lumber Co., owed him $17,400 and some odd and he wanted his money, and as the Detroit Timber & Lumber Company was buying the whole thing, the Detroit Timber & Lumber Co. paid him the $17,400.

Q. In estimating the value of the plant down there, what estimate did you put upon it? A. That was a liability.

Q. I know it was a liability, but you paid it all the same? A. Certainly.

Q. What estimate did you put on the properties in Pike County, what did you estimate them as being worth? You paid $60,000 to Mr. Martin and Mr. Alexander, the stockholders, and you paid $17,000 in addition to that? A. The $17,000 I paid him reduced the liabilities, it did not affect the value I was putting on the property at all.

Q. There was money due then and debts they owed? A. Yes, sir.

Q. You bought the whole thing? A. Yes, sir, they had 20 odd thousand dollars coming to them for lumber.

Q. I believe you stated their trial balance showed what? A. Their total assets showed $121,213.88, and over their liabilities they showed a surplus of $46,842.19.

Q. A surplus of what? A. They were carrying a surplus, a profit.

Q. You spoke of deducting $29,000 from something what was it you made the deduction from? A. I cut down their assets, I thought they had the planing mill and roads, the improvements, too high; they valued their stock in the store at some $12,000 or $13,000 and I cut off $3,000 for shop worn

926 goods; I kept cutting off until I cut off $29,000, took that off of the total assets to cover any discrepancy for bad accounts and shrinkage in the value of their property whatever.

Q. What did their statement show the net worth of the concern to be? A. Something about $89,000.

Q. From that you say you deducted $29,000? A. Yes, sir.

Q. Now it appears here that J. O. Means was a stockholder in the concern of the Martin-Alexander Lumber Co.; who controlled that stock? A. At the time I made the deal with Mr.

Martin I did not know anything about Means holding any stock. When the transfer was made he transferred that, he controlled that.

Q. What was the amount of stock that Mr. Means held? A. I think it was one share.

Q. What were the shares of stock? A. $100, I think.

Q. Who was Mr. Means, do you know? A. All I know of him was J. O. Means; he was there, he was a kind of manager around there. He went away at the same time that Mr. Martin did. I think he had charge of the sawmill plant.

Q. In your deposition taken at Texarkana, on behalf of the plaintiff in this case, it appears a release was given by the Detroit Timber & Lumber Co. to a man named Colston, that that release was mailed to him at Little Rock. At that time you stated that you mailed that release from St. Louis, have you any other recollection about the matter now? A. Yes, sir, I made the statement I didn't know whether I sent it to Mr. Alexander or Mr. Colston, I find from the copy book I sent it to Mr. Alexander.

Q. That receipt appears to be[witnesses]by A. V. Alexander, secretary, do you know about that? A. No, I didn't know that name was put in it until I saw it down there that
927 day. There was no necessity for it.

Q. Where was the release sent from? A. From this office.

Q. To whom? A. To Mr. Alexander.

Q. For what purpose was it sent to Mr. Alexander? A. The timber had been cut off from his land.

Q. Why was it not sent to Mr. Colston instead of Mr. Alexander? Why was it sent to Mr. Alexander? A. I don't know. I can't [asnwer] just why it was sent to Mr. Alexander; Mr. Alexander may have requested it, I don't know how it was. I never gave it any attention. It was the Martin-Alexander Lumber Co., cut the timber off, we never cut any timber off.

Q. You do not know why it was sent to him? A. No, sir.

Signature waived.

928 Arch. V. Alexander, being first duly sworn and examined on the part of the defendants, deposes and says as follows:

Direct Examination

By Mr. Read:

Q. What is your name? A. Arch V. Alexander,

Q. What is your age? A. I am nearly 47 years old.

Q. Where do you reside? A. That is a pretty hard question to answer,

Q. Your home is in Kansas City? A. I claim my home in Little Rock, but my family at present are in Kansas City.

Q. Did you have any connection with the Martin-Alexander Lumber Co. if so what? A. Yes, sir, I was secretary of the Martin-Alexander Lumber Co.

Q. Were you one of the original organizers of that company? A. I was.

Q. When was that company organized? A. December 20th, 1898, I believe, or was it 1898.

Q. 1898? A. Yes, sir.

Q. Where were you doing business? A. At Pike City, Arkansas.

Q. When did you first become acquainted with Jim P. Copelind? A. It was in the spring of 1896 or 1897, 1897, I believe. You can refresh me on that by the document you have.

Q. This suit was brought, a bill was filed to set aside patents to a number of tracts of land alleged to have been entered under the Timber and Stone Act in pursuance of a conspiracy entered into by your co-defendant, E. B. Martin, and Jim. B. Copelind, and yourself, state what conversation or interview you ever had with E. B. Martin and Mr. Copelind with reference to these lands and as near as you can when it occurred? A. Was it December 20, that Mr. Martin went in there with me?

929 Q. Yes. A. Did you ask me the time that I had the talk with Copelind? Question read commencing with the words, "This suit was brought" A. Some time in 1899, Mr. Copelind came to my office, or the office of the Martin-Alexander Lumber Co., in Pike City, Arkansas, and he had in his possession at the time a pamphlet containing the United States Government land laws, and showed from that pamphlet a law under the head of Timber and Stone Act and told me that our Congressman, Mr. McCrae had sent him this book, and that he had had it in his possession for some time, that he had studied the law quite fully, and, as near as I can remember, said he had been to Camden and had also talked with the Receiver of the land office there with reference to the law and he felt he thoroughly understood the law, and told me had seen a number of his citizens there and had interviewed them with reference to their making purchases under this law, that the few parties he had seen desired to avail themselves of their right under the law, but they did not have the money necessary to buy the land. He said, however, that he had lived in that country a great many years, and that certain of his neighbors and citizens there with whom he was well acquainted and knew to be perfectly honorable men—that if he had the money himself he would loan the money to these various individuals that he himself knew to be honest and reliable, to

make these purchases, and I do not remember now, whether it was Mr. Martin or myself remarked to Mr. Copelind that if he desired to—I am trying to repeat the conversation as near as I can,—strike out "if he desired to", that if he knew the people to be perfectly honest and reliable that we would loan them the money if they would give us their notes for the same, bearing 8 per cent interest. That is about the conversation I had with him.

Q. Was Mr. Martin present during this conversation? A. I am quite sure he was.

930 Q. Was the law discussed between you three there? A. Yes, sir.

Q. The provisions of the law? A. Yes, sir.

Q. What did you understand with regard to the right you had to make the agreement with the people to convey you the land before the purchase by them? A. We knew the provisions of the law thoroughly, we knew we could make no agreement of any kind or character with the men as regards the lands or timber.

Q. Were you demanding any security from the men on their notes? A. No, we did not ask them any security, we knew we were not getting any.

Q. Was this in substance all the conversation that took place between you, Mr. Martin and Mr. Copelind with reference to these entries? A. Now, in substance, I presume that was about all, of course we talked at different times. I do not know that we ever met for the express purpose of talking over the subject any further. Mr. Copelind had the exclusive management of our land department, he bought a great many lands that we never saw; we gave him money when he came and asked for it and he did as he pleased with the money.

Q. Was there any different arrangement between you and Mr. Copelind with respect to lending money to prospective purchasers of the land except what you have stated here? A. No, sir.

Q. That is the substance of all you said in reference to the matter? A. Yes, sir.

Q. Did you ever at any time make an agreement or arrangement with any of the parties about the purchase of the lands prior to the time they had received their final certificate? A. I most positively did not, neither direct nor inferred.

931 Q. Did the Martin-Alexander Lumber Co.? A. No, sir. They did not.

Q. You gave a statement to Mr. Schlierholtz with reference to the matter when he came to see you? A. Yes, sir.

Q. Was that statement true? A. It was. The only obligation that these parties were under [ot] us at any time was to pay us the money they borrowed with 8 per cent interest.

They had the right to sell their land or timber to anybody they pleased.

Q. State what conversation you had with S. V. Moran or Bill Dorsey, or Mrs. Moran, the wife of S. V. Moran, relative to the purchase of their lands from them? A. The lands or timber?

Q. The timber from them? A. I simply asked those three parties named, Mr. Moran, Mrs. Moran and Bill Dorsey, if they cared to sell their timber on the land they had purchased, they [daid] they did not want to sell it at that time.

Q. Was that before or after they got their final receipts? A. It was after they got their final receipts.

Q. How long after? A. It was several days, I don't know how long.

Q. What did they say about it? A. They told me they were not wanting to sell their land or timber. I replied to them that was all right, that they had a perfect right to hold their timber and their land as long as they wanted to, but they had not given me a note for the money, and I asked them if they would not sign three notes representing the amount each of them borrowed from me to purchase the land and they objected to that.

Q. Where did the conversation occur that you have just detailed? A. The first conversation occurred at the saw mill of the Martin-Alexander Lumber Co. and later, possibly on the same day, that I will not be sure of, however,—no, I am mistaken, the first conversation took place in my office.

932 Q. At the saw mill? A. Near our saw mill in Pike City. The second conversation took place at the saw mill when I happened to be down there and [indidentally] ran on to Moran, that was with Moran and no one was present at the time. Then on the same day of the second conversation I went to Moran's house and took with me three notes and asked them to sign the three notes stating to them at the time that if they could not pay the notes when they fell due, the company would renew the notes for them and they could sell their timber or the land to whoever they pleased, that all we wanted was the return of our money with interest.

Q. Why did you want them to sign the notes? A. Simply because we had no acknowledgment whatever of the indebtedness they owed us.

Q. Did you ever at any time demand of them that they give you a timber contract? A. I positively did not.

Q. Did you state to Mr. Moran that all the other parties who had entered lands had executed notes before the final receipts were given and timber contracts immediately afterwards? A. I positively did not, for such was never the case.

Q. Now state when was the first time you opened negotiations with Mr. Clark or the Detroit Timber & Lumber Company relative to selling out this business down there, and what led you to do so? A. I think it was in December 1900, and what led me to do so was that Mr. Martin and myself had agreed that we would sell out the Martin-Alexander Lumber Co. For that purpose I saw Mr. Clark and solicited him as a purchaser of the property for the Detroit Timber & Lumber Co.

Q. Had you seen any one else before you saw Mr. Clark as a possible purchaser of the property? A. Well, now I don't know whether I had or not, possibly I may have incidentally mentioned it to some one, but I don't think I ever went into,—I never made much of an effort to sell the property except to Mr. Clark.

933 Q. What took place between you and Mr. Clark with reference to that matter? A. I came up here and told Mr. Clark that the Martin-Alexander Lumber Company's plant, including everything they had, book accounts, saw mill, planing mill, live stock, railroads, timber and everything, was for sale, and asked him if he would consider a [porposition] as a purchaser of the property, and he asked me some questions with reference to it, and at the time I came here I was prepared to make a statement and had the statement in my possession, which statement I see is an exhibit here.

Q. How did you happen to make out the statement? A. I made it out for the purpose of showing up the condition of the company's property.

Q. Had you or Mr. Martin ever had any business connection with Mr. Clark prior to that time? A. Why, he had bought a few car loads of lumber from us in a general way just as he was buying from other mills.

Q. Had he prior to that time had any interest with you or Mr. Martin or the Martin-Alexander Lumber Company? A. None whatsoever.

Q. How long had you known him? A. I had known him a few months prior to that time.

Q. Now you came here and presented him this statement that you brought with you? A. Yes, sir.

Q. Then what occurred? A. He looked it over and seemed to be impressed favorably with it and said he would send his man down there, his timber man, Mr. McDonald, to look at the timber, and he himself would go down later after Mr. McDonald had an opportunity to look at the timber, provided Mr. McDonald made a favorable report on the timber. Mr. McDonald got there on Christmas Day, 1900, and I presume he made his reports to Mr. Clark, he did not make any to me, and later Mr. Clark came down. When Mr. Clark came down, he went over the mill properties, the road and timber land,

he did go so much over the timber land, he rode around
934 it and interviewed his timber man, Mr. McDonald, who was an entire stranger to me when he came there. After he looked it all over he said if he could buy it at a price that he thought it was worth to the Detroit Timber & Lumber Co. he would buy it for the Detroit Timber & Lumber Co.

Q. Was there any understanding or agreement as to what he was to buy, whose interest he was to buy? A. He talked with Mr. Martin, and he talked with me and he said this: "Now, you understand I am buying this property for the Detroit Timber & Lumber Co., and I don't want to buy a part without I buy it all. Now, I have submitted Mr. Martin a proposition on condition that you agree to sell yours at the same proportionate value," and I agreed to it.

Q. In other words you agreed to sell at the same price Mr. Martin would sell at? A. Proportionately so. The sum total paid to all the stockholders interested for their various interests amounted to the value that Mr. Clark fixed on it as being worth to the Detroit Timber & Lumber Co., which was $60,000.

Q. With that what was he to do with reference to the liabilities? A. That was the net worth of the company as he figured it up to be. Of course the net worth in the statement figured up $89,000 and he made his own calculations. He said for what our statement showed to be worth to us, that is, to have cost us, $89,000, he would give $60,000 for it for the Detroit Timber & Lumber Co.

Q. Were you present at the conference between him and Mr. Martin? A. Yes, sir, part of the time, most of the time, I think.

Q. State what occurred between them? A. He said he would sell his interest in the company for $37,000 or $37,500, Mr. Clark said, he would give for his interest $35,000. You understand in the mean time Mr. Clark had an agreement with me that I would sell at a proportionate value.

935 Q. Was that price finally accepted by Mr. Martin? A. Yes, sir, it was accepted.

Q. What was done? A. Immediately upon Mr. Martin's acceptance of Mr. Clark's proposition, Mr. Martin called myself, Mr. Means and himself, the three of us together, and we went into a meeting of the Martin-Alexander Lumber Co., at which Mr. Martin presided as president, and he formally tendered his resignation as the president of the Martin-Alexander Lumber Co., and Mr. Clark was elected in his place for the purpose of winding up the business of the Martin-Alexander Lumber Co.,

By Mr. Youmans:

Q. Was that a stockholder's meeting? A. A stockholder's meeting of the Martin-Alexander Lumber Co. on the 14th, day of January, 1901.

Q. Were you secretary of the company? A. Yes, sir.
Q. Did you keep minutes of that meeting? A. Yes, sir.

Plaintiff's counsel objects to the testimony with regard to the meeting on the ground that the minutes of the meeting are the best evidence.

By Mr. Read:

Q. Do you know where that book of the Martin-Alexander Lumber Co. is? A. No, I looked for that book and it is lost, I cannot find it.

Q. How long has it been since you looked for it? A. I looked for that book right about,—I guess it must have been about eight months ago, eight or nine months ago.

Q. What became of the books of the Martin-Alexander Lumber Co.? A. Why, the Martin-Alexander Lumber Co. had a lawsuit with the Long-Bell Lumber Co. and Mr. Martin and Mr. Long agreed to meet in Chicago, for the purpose of going over the accounts and the books were handled between Mr. Martin and Mr. Long, of the Long-Bell Lumber Co. and they were shipped around over the country until I don't
936 know where they are. They have been mixed up and lost in various ways, so to-day I do not know where they are.

Q. Have you enquired of Mr. Martin and Mr. Long? A. I know Mr. Long did not have them because they took their bookkeeper to Chicago where they had the books.

Q. Have you spoken to Mr. Martin about them? A. Yes, sir.

Q. And you have been unable to find them? A. Yes, sir, they were scattered around being of no particular value. These books have been gone a long while.

By Mr. Youmans:

Q. What need did Mr. Martin and Mr. Long have for the minute book of that company? A. I do not think they had any need for it, but the books were scattered around promiscuously and that book is lost.

By Mr. Read:

Q. Did you have a fire there? A. Yes, sir, I had a lot of stuff burned up by one of the Clerks there, a wagon load of stuff, I guess.

Q. Have you seen the minute book since the fire occurred? A. No, I have never seen it since the fire occurred.

Q. Have you searched for it? A. I have looked around and cannot find it.

Q. You state that the object of Mr. Clark being elected president of the Martin-Alexander Lumber Co. was simply to wind up the affairs of that company? A. Yes, sir, and in ac-

cordance with an agreement between Mr. Martin, Mr. Clark and myself, immediately following the meeting in which Mr. Clark was elected president of the company, we agreed with him, on his urgent solicitation, that we would discontinue the name of the Martin-Alexander Lumber Co., as soon as possible.

Q. You have stated that Mr. Clark bought out Mr.
937 Martin's interest; what became of your interest? A. Well, I told Mr. Clark that I would prefer,—

Q. Was that after he purchased Mr. Martin's interest that you told him that? A. I told him that I would sell my interest, before he bought out Mr. Martin, to the Detroit Timber & Lumber Co. on the basis of the same value. After he bought Mr. Martin out, I told him I would prefer to retain my interest in the company, in the Detroit Timber & Lumber Co.

Q. You say to retain your interest? A. I did not mean to retain my interest, I would prefer to take stock, in Detroit Timber & Lumber Co.

Q. Had you had any interest in the Detroit Timber & Lumber Co.? A. I never had any interest of any kind in the Detroit Timber & Lumber Co.

Q. I understand you now; you said to him you would prefer instead of taking the money to take stock in the Detroit Timber & Lumber Co.? A. Yes, sir, instead of the money to buy stock in the Detroit Timber & Lumber Co.

Q. How much stock did you hold individually in the Martin-Alexander Lumber Co.? A. $25,000.

Q. Was that your wife's or yours? A. My wife's, she had most of it.

Q. Who managed the affairs of your wife in that matter? A. I did.

Q. Go ahead? A. Mr. Clark said if that was my wish in the matter he would try and arrange it so, and see that I could get the worth of my purchase money, $25,000 in stock of the Detroit Timber & Lumber Co., so during that period from January 14th, 1901, until April 22nd, of the same year, I just simply had an open account against the Detroit Timber & Lumber Co. for $25,000, and on April 22nd, I got my stock in the Detroit Timber & Lumber Co.,

938 Q. How much stock? A. $25,000.

Q. You mean you got it? A. I got it myself.

Q. It was issued to you? A. Yes, sir.

Q. Was it done with your wife's consent? A. Yes, sir.

Q. Did you know what the capitalization of the Detroit Timber & Lumber Co. was at that time? A. I did.

Q. What was it? A. $140,000.

Q. At the time you got your stock in it? A. Yes, sir, that was the capitalization of the Detroit Timber & Lumber Co. at that time, $140,000.

Q. At the time you got your stock? A. At the time I got my stock it had been increased at a meeting of the stockholders to $140,000.

Q. You understood that at the time you got your stock in the company, $25,000, that the increase had been made? A. Yes, sir.

Q. Did you understand why the increase had been made? A. Mr. Clark told me when I first asked to buy stock in the Detroit Timber & Lumber Co. that there was not any stock that could be given me at that time, that they would have to have a meeting and create more stock, and I was not present at any of these meetings. Later on he told me the directors and stock holders had a meeting and increased the stock from $40,000 to $140,000, and had taken action at the meeting to give me $25,000 of stock in the company, which I got.

Q. What was the value of that stock at the time you got it? A. It was worth 100 cents on the dollar.

Q. Were you ever secretary of the Detroit Timber & Lumber Co.? A. No, sir, I was not.

Q. Who signed your name down there as secretary to some vouchers, why was that, explain why you happened to
939 do it and all about it? A. I was just a sort of an acting secretary at the mill down there, I never held any position as secretary of the Detroit Timber & Lumber Co.

Q. Did you have any duties to perform for the Detroit Timber & Lumber Co. outside of Pike City? A. No, sir.

Q. What were your duties at Pike City, that is what I want to get at? A. I had charge of the manufacturing department of the Detroit Timber & Lumber Co. at Pike City, Arkansas.

Q. To whom did you report? A. I reported to this office, Mr. Clark as President of the Detroit Timber & Lumber Co.

Q. How did you make payments, or did you make any payments for the Detroit Timber & Lumber Co.? A. I paid them by signing vouchers that were sent here by the President Mr. Clark, and he disposed of them.

Q. That is all the duties you had to perform for the Detroit Timber & Lumber Co.? A. Yes, sir, buy mill supplies, things of that kind, stock for the store.

Q. How long did you continue in that capacity? A. I continued in that capacity until the 15th, day of January 1902.

Q. I understand there was a sign down there somewhere with your name on it as secretary, how did that happen to be put there? A. I put it up there, just my own,—just my own idea of it, just to give me a little prominence down there, I guess. I knew I was not secretary of the Detroit Timber & Lumber Co. I was just acting secretary at the mill.

Q. For what purpose? A. For the purposes I have named.

Q. So far as you know what information did Mr. Clark have of the history of the title to these lands on which the
940 Martin-Alexander Lumber Co. owned timber contracts at the time of the deal with Mr. Martin and yourself? A. I don't know that he had any knowledge of the manner in which any of our titles were acquired.

Q. Did Mr. Martin in your presence convey any information of the matter to him, if so, state what it was? A. I do not remember that we made any statements to Mr. Clark, relative to it. We told him our titles were all right, and on our representations he took it.

Q. What was your opinion with reference to the validity of the titles of the Martin-Alexander Lumber Co. at that time, to the timber on that land or any land which you may have owned? A. I believed every title we had to be perfectly good.

Q. And you so represented to Mr. Clark? A. I told him I believed that every title we had was a good title, a perfect title.

Q. Do you know how Mr. Clark arrived at the amount of timber contracts that you had and the land on which they were? A. We furnished him with a plat of the lands that we had and he sent Mr. McDonald over the lands to estimate the timber on them?

Q. Did he have a map of the lands? A. Yes, sir.

Q. How did he verify that map? A. Well, when the papers were turned over to him, the deeds and timber contracts, whatever kind of title we had to the various tracts of land or the timber on the lands, I think Mr. Martin just called off the description of the lands.

Q. What did he call off? A. From the deed or timber contracts, whatever he had in his hand at the time, and Mr. Clark checked it off on the map.

Q. Was that before or after the deal was closed? A. I think it was after it was closed.

Q. Do you remember about it? A. No, I do not remember just about the matter now.

941 Q. You remember that the land was checked in that way? A. Yes, sir.

Q. Mr. Martin calling off from the deeds or timber contracts, and Mr. Clark having the map before him? A. Yes, sir.

Q. Do you know how long Mr. McDonald was down there examining the lands? A. He got there on Christmas Day of 1900 and he remained there until the first part of the month of January when Mr. Clark came down and then he continued to remain there after Mr. Clark went back, stayed there as long as I did, in fact until the Detroit Timber & Lumber Co. sold out.

Q. How much land did you own there besides the land in controversy; or timber contracts? A. We had timber contracts with the receiver of the Smithton Lumber Co. plant for 7,000 acres, which we had bought at [at] 50 cents stumpage, and in addition to that we had a good many other timber contracts.

Q. Outside of this land in controversy? A. Outside of the land in controversy. I do not think the land in controversy represented more than about one-third of what we had altogether there, but we had cut a part of it before Mr. Clark came down.

Q. The land in controversy did not amount to over one-third of the whole amount of land you owned at the time you sold to Mr. Clark? A. You understand we had cut the timber on considerable of the land,—

Q. In controversy? A. On the outside, not very much on the land in controversy, but the 7,000 acre tract and other private lands we had in there we had cut some timber off of it, but whatever we had left on the whole business of course was estimated by the Detroit Timber & Lumber Co.

Q. What proportion did the land in controversy bear to the whole amount of the land on which you had timber contracts?

942 A. From the beginning of my existence up, it would be about one-third, it would be, in accordance with a rough estimate I would make of it now, I don't think over one-third.

Q. What were you to pay for the timber on this other land you owned outside of the land in controversy, what stumpage? A. On the 7,000 acre tract, we paid 50 cents stumpage, that was to be paid for as cut.

Q. What was the ruling price down there for timber? A. [%o] cents was the highest market price being paid for timber there at the time. We bought a good many of our stumpage contracts for less.

Q. You made a good many stumpage contracts for less? A. Yes, sir, J O Means owned one share of $100 stock in the company that was controlled by Mr. Martin, and it was sold to the Detroit Timber & Lumber Co. for $150.

Q. That was included in the $35,000 that Mr. Martin got? A. Yes, sir.

Q. Do you know whether or not Mr. Clark with the assistance of Mr. McDonald, or otherwise, made an estimate of the amount of timber there was standing on that property in timber contracts before he closed the deal with Mr. Martin? A. I presumed that was what Mr. McDonald was doing there. I did not know much about what Mr. McDonald was doing, he was under Mr. Clark's direction entirely. He came down there

and we had given him a list of all lands we had of every kind and the character of the timber.

Q. You spoke of Mr. Clark and Mr. Martin checking off the land at one time? A. Yes, sir.

Q. You stated I believe, that you did not remember whether that was before or after the sale? A. Yes, sir.

Q. If it was after the sale there would be no object in doing it, would there? A. No, sir, I presume that must have been done before, but, as I said, I do not remember. It is more reasonable to presume that it would have been done before.

943 Cross-Examination

By Mr. Youmans:

Q. What proportion of timber was there on the lands upon which you had timber contracts as compared with the timber upon all of the lands that you either had leases of or had purchased outright; in other words, what proportion of the timber that you had was on the lands in controversy at the time of the sale? A. It would be impossible for me to answer that question anything like correctly, for I do not know.

Q. In reply to a question to you by Judge Read, I did not understand whether reference was had to the lands themselves as regarding the proportion or the timber on the lands, what did you mean when you answered him, did you have reference to the timber or the lands? A. Well, I had reference to the stumpage we had bought since we first started in there altogether.

Q. Then I understand from that that the stumpage on the lands in controversy was one-third of the entire stumpage that you owned or controlled at the time of the sale, was that right? A. No, that is not right. I was down there doing business and sawing logs a good while before Mr. Martin came in with me. When I went down there the first deal I made was this 7,000 acre tract. Now, there was a part of that 7,000 acre tract that there was some timber on, probably not so very much, I don't remember how much there was. We had added to it tracts outside of the land in controversy, all we could get around there, for which we had got fee simple deeds and timber contracts also. Now, to state just what proportion of all the timber that we had was on the land in dispute I could not do, I do not know.

Q. With regard to the timber on the 7,000 tract, as a matter of fact, had not that timber been cut off, a good portion
944 of it? A. It is a fact it had been cut off, a good portion of it.

Q. That did not represent virgin timber? A. What was not cut did, in most places we cut it tolerably clean, we did go over part of it and cut some that was left.

Q. Had it not been cut over to some extent before you bought it? A. No, it was virgin timber when I bought it.

Q. You say that Jim P. Copelind at the time you have mentioned in your examination in chief, was in the employ of the Martin-Alexander Lumber Co.? A. Yes, sir.

Q. The first conversation that you had with him that you can recall was when he brought into the office a copy of the land laws of the United States and exhibited to you and Mr. Martin, what is termed the Timber and Stone Act? A. Yes, sir.

Q. Now, that is the first conversation you had about that? A. That is the first I have any recollection of.

Q. You state in that conversation he told you he had already been to the land office? A. Now, I said I thought he told me that. That is not altogether clear in my mind as to the conversation I had with him for it has been a longwhile ago, it is impossible for me to recall it in full.

Q. Now you say in that conversation he said he knew of honest men, or had talked with honest men, who stated that they would like to take up the land under the Timber and Stone Act if they had the money? A. Well, he told me he had talked with some of his neighbors and people he knew well and had made them acquainted with their rights under this law and that they had expressed a desire to avail themselves of this right if they had the money, but they did not have the money, and if he had the money himself, knowing the people as he did, that he would willingly loan them the money for the purpose of making those purchases and trust entirely to their honor in paying him back the money that he had loaned them with interest.

945 Q. Did you tell him at that time that the Martin-Alexander Lumber Co. would lend them the money for that purpose? A. Either myself or Mr. Martin made the remark I don't know which one it was.

Q. Did the Martin-Alexander Lumber Co. at that time have the money with which to make those loans? A. Well, they had the means of getting it if they did not have it.

Q. As a matter of fact did not the account of Mr. Martin against the Martin-Alexander Lumber Co. represent the money that was loaned to the various parties named in this bill for the purpose of making these entries? A. I think not, sir. I do not think it was carried in that way in our books.

Q. Whether it was carried in that way or not, was not the money obtained in that way from Mr. Martin? A. No, sir. Mr. Martin simply loaned us money as we needed it in various amounts for any purpose.

Q. What was the money borrowed for from Mr. Martin? A. It was borrowed for various things. We bought five miles

of steel rail down there and we had to have some money; my recollection is we had to borrow the money from Mr. Martin to pay for the steel rails, and as we borrowed it we credited it to him on his personal account. On various occasions we had to borrow money which we called on him for from time to time and placed it to the credit of his account.

Q. Mr. Martin's account against the Martin-Alexander Lumber Co. at the time of the sale amounted to $17,000 or $19,000? A. I think it was about $17,400.

Q. Are not the amounts that you have charged up on your books against those various parties in the aggregate just about $17,000 or $18,000? A. That I could not say without going over the books, but we owed Mr. Martin considerable more money than $17,400 which we had borrowed at different times and were paying him back as we could. Whenever we had money that we did not need, we paid it back.

946

Q. What was your object in lending these various parties the money? A. Well we loaned the money for the purpose of enabling them to buy timber lands under the Timber and Stone Act.

Q. Why did you lend money when you were at that time borrowing money for the purpose of carrying on the operations of your business? A. Well whenever it was necessary to borrow money for any purpose we could borrow it, Mr. Martin was a man who had plenty of money to loan whenever we wanted to borrow it.

Q. I understand that. Why did you engage in this lending of money at the very time when you found it necessary to borrow money to carry on your business? A. Well, I never thought of it exactly in that light. Our company was capable of getting a great deal of money at any time we wanted to from Mr. Martin, as I previously stated. When these men bororwed this money for the purpose of availing themselves of their rights under the Timber and Stone Act, if they were perfectly honest men, which they were recommended to us to be, and they sold that timber to anybody else we had just as good a chance to buy the timber from the party to whom they sold, as any other person had if they disposed of it, and if they disposed of it they would come and pay us the money. Mr. Martin was loaning money for the interest there was in it, and we were paying Mr. Martin 8 per cent interest.

Q. And you were lending the money at the same time at 8 per cent interest? A. Yes, sir.

Q. With no other object than to enable the parties to enter the land under the Timber and Stone Act? A. That was the purpose for which we loaned them the money.

Q. How did the Martin-Alexander Lumber Co. derive any money from the transaction when they loaned the money at exactly the same price it paid for the money it bor-
947 rowed? A. They were not losing any money, borrowing money at 8 per cent and lending it at 8 per cent, they were enabling the citizens to acquire rights to property, for when they had acquired rights to it no matter who they sold to, the property would some time or other be in the market for sale. We took just as good chance as anybody else to buy it from those people.

Q. Then the Martin-Alexander Lumber Co. loaned the money with the expectation of buying the lumber on the land so entered? A. We had no intention of it. We knew the people could do as they pleased with the land and some time or another it would be in the market for sale, and we would have as good chance as anybody else when it was sold.

Q. You did not expect to collect your money until it was sold? A. I don't know about that. There was not a man there but could have sold his land and paid it back.

Q. You did not expect to collect it until the land or timber was sold? A. As I said I did not know the men as intimately as Mr. Copelind did and if any man had come up and offered us the money for his note and payment of interest he would have got back his note and did as he pleased with this land. We never had any claim or security on the land of any kind or character.

Q. You did not expect to collect the note until the land or timber was sold, did you, as a matter of fact? A. No, I say, but what a man would expect or happen that is two different propositions entirely.

Q. The question is, what did you expect? A. I expected that when the men got the title to their timber if they sold it to anybody else they would come and pay us the money. If we bought it we could credit them in that way, but we had no arrangements for obtaining the land or the timber.

Q. You did expect them to sell the land or timber to pay the note? A. We thought that was the most likely
948 thing to occur, that is that they would sell the land or timber and pay us back with interest.

Q. Didn't you think the most likely thing would be that they would sell to the Martin-Alexander Lumber Co.? A. We had no assurance of anything of that kind?

Q. Was there anybody else buying timber there? A. Yes, sir, the Wooden Gutter Co., and the Dierks Lumber Co. on the other side.

Q. Where was that lumber company buying? A. At De Queen, they were buying to the Pike County line.

Q. The Wooden Gutter Co.? A. I do not know that they were buying at that time, they were handling lumber.

Q. Don't you know that they were not buying anything at that particular time? A. I think they began their buying later, that is my impression.

Q. The same way with the Wooden Gutter Co.? A. Yes, sir, at that time the whole country was full of timber, timber was a drug on the market and the very highest price anybody asked in that country was 50 cents stumpage. I guess there was 300,000 or 400,000 acres that a man could have bought in that way in that country.

Q. Therefore when you loaned the people money at the time you were borrowing money to conduct your business you had no expectation with regard to the repayment of it with the timber that was on the lands entered? A. Well, as I say, I did not have any planning for the people at all with regard to how they were going to pay the money back. We loaned them the money and took their notes, and what plans they had I I do not know. I knew they had made an investment where the money was perfectly safe to them, with a note to us, and if they were honest when they sold it to anybody they would pay us back the money with interest.

949 Q. You have spoken with regard to the honesty of the men; were not all of them in your employ? A. Nearly everybody in that country was in our employ.

Q. I did not ask you that question? A. Yes, nearly all of them.

Q. I ask you if the men who made the entries to whom you say you loaned the money were not in your employ? A. Yes, nearly all of them were in our employ.

Q. As a matter of fact, were they not all in your employ except the married women who were married to men in your employ? A. No, sir.

Q. Which ones were in your employ? A. A very large majority of them were in our employ.

Q. Name any one not in your employ? A. One of the Fullers was not in our employ.

Q. Which one? A. I can't remember the initials of them.

Q. Hasn't he been in your employ? A. If the man I refer to had ever been in our employ I don't remember, he possibly may have been.

Q. Was there any other man? A. Stephen A. Fuller.

Q. Was there any other man except Mr. Fuller that was not in your employ among that number? A. Well, there was a good many of that number that was not in our employ all the time, you understand.

Q. Was there any man who made an entry of public land under the Timber and Stone Act and to whom you say you loaned money that was not in your employ at the time you made the entry? A. Yes, sir.

Q. Who was it? A. The one I have referred to, that one in particular was old man Fuller, I think it was Stephen A. Fuller.

Q. Was there any other man, anybody else? A. Yes, I think there was two of old man Copelind's sons that were not in our employ.

950 Q. Did you say they were not in your employ at the time the entry was made? A. My impression is they were not.

Q. Had they not been in your employ? A. As I say nearly everybody in that country was in our employ at some time.

Q. I mean those two? A. I do not think they were, I could not say.

Q. Now, were any men named at that first conversation with Mr. Copelind with regard to the entry of lands? A. I could not answer that to save my life, whether he called any particular names or not. He said he knew the people there, he had lived there in the country many years, and there were certain people he knew there, and that if he had the money he would loan money to them to buy those timber lands.

Q. Did you ask Mr. Moran to sign a timber contract at all? A. I asked Mr. Moran if he wanted to sell his timber and showed him a timber contract setting forth the character of purchase that I proposed to make of his timber, he said he didn't want to sell his timber, and I said, "All right."

Q. You produced a contract for him to sign similar to the contract introduced in evidence in this case? A. Yes, sir.

Q. When did Mr. Martin insist that the name of the Martin-Alexander Lumber Co. should not be used any longer than was necessary? A. The only remark that he made in connection with that that I can remember is that he did not want his name used in connection with any company that he didn't have anything to do with or any interest in.

Q. Can you give no reason outside of that? A. No. sir.

Q. The company was a corporation? A. Yes, sir.

951 Q. There was no individual liability attached to it? A. No, sir.

Q. No other reason was given? A. That is all that he said to me that I can remember.

Q. You say you continued there in the employ of the Detroit Timber & Lumber Co., and you signed vouchers? A. Yes, sir.

Q. Now, how did you sign the vouchers, for what purpose? A. We paid our bills on the 15th, and 30th, or the first day of

each month, we had two pay days, for bills of purchases, and upon those days we would get our bills and make out the bills on vouchers and it would be O K'd by the clerk and passed over to my desk for approval and my signature. Right below on the second part of that voucher was printed the word "Secretary" and I signed my name over that.

Q. What was done with it then? A. Then it was forwarded up here by Mr. Clark who was president of the company and he signed the voucher and made it negotiable.

Q. Was the voucher then paid by check? A. The voucher was a check within itself.

Q. Was there no check issued in payment of the voucher? A. No, I don't think there was.

Q. Is that your handwriting on the back of that paper? (handing paper to witness). A. Yes, sir, that is my writing.

Q. What does that say on the back of it? A. "Copy of letter to J. O. Means for his signature."

Q. What else? A. "A. V. A."

Q. Was that a letter you sent to Mr. Means to be signed? A. Now, I tell you I do not remember about that letter.

Q. That is your writing on the back? A. That is all the recollection I have in regard to it.

Q. That simply means the letter was sent to him to be signed? A. I don't know what it means, I don't re-
952 member anything about that letter.

Q. But you do recognize your hand writing? A. I recognize that as my handwriting.

Counsel for the United States asks that the paper referred to be made a part of this witness' deposition and the same is marked Exhibit "I" and hereto attached.

Defendant's counsel object to it so far as it applied to the Detroit Timber & Lumber Co. and also that it does not show that it was done by any authority of the Detroit Timber & Lumber Co. and is immaterial to the issues so far as they are concerned, and especially because it does not show that the Detroit Timber & Lumber Co. knew of it or authorized it to be written or had any [cinnection] with it.

The Witness: Let me see it again. I surely do not remember about that letter. It seems to be some epistle to me. It looks like my writing, I feel I wrote it because it looks like my writing, I don't remember about that, it looks just exactly like my writing.

Q. You say you do not remember anything about that letter at all? A. I do not have any recollection about that letter.

Q. You do not know whether any reply was received to it or not? A. No, sir, if I had anything to do with that letter

it has slipped out of my memory entirely. The contents of that letter are in no way familiar to me at all.

Redirect Examination

By Mr. Read:

Q. It seems the release sent to Mr. Colston by the Detroit Timber & Lumber Co. given in evidence in Mr. Clark's former deposition in this case was signed by you "Attest Martin-Alexander Lumber Co. A. V. Alexander, Secretary", did you put it on there? A. Yes, sir, I put it there when I sent it
953 to Mr. Colston.

Q. Why did you do it? A. Because I felt that Mr. Colston would be satisfied that the Martin-Alexander Lumber Co. had no claim on his land.

Q. Did you do it from any authority of the Detroit Timber & Lumber Co.? A. No, I never consulted with Mr. Clark, I did it to make Mr. Colston feel there was nobody had any claim on his lands at all.

Q. That was on your own motion? A. Entirely on my own motion.

Q. Now, I will show you one of the vouchers of the Detroit Timber & Lumber Co. and ask you if that is the character of voucher you signed while at Pike City and which has been referred to in your deposition heretofore as having been signed by you over the word "Secretary?" A. This is the same thing.

Q. Will you file it with your deposition as part of it? A. Yes, sir.

The voucher referred to is marked Exhibit "J" and hereto attached.

Q. Do you know whether a check would be issued on that voucher, or whether the voucher would be presented to the bank for payment? A. This is all right as a check when signed by the president, it is not until it is. It is a report from the mill.

Q. Mr. Youmans has asked you why the Martin-Alexander Lumber Co. was willing to lend money to purchasers who wanted to buy; I understood you to say in response to that first because you thought the people were honest that had been recommended to you by Mr. Copelind? A. Yes, sir.

Q. You knew if they bought land it would be on the market? A. Yes, sir.

Q. And if sold to other persons they would pay you the money? A. Yes, sir.

954 Q. You had an equal opportunity to buy as any one else? A. I thought so.

Q. Was it not a fact that this land if it was in the hands of individual owners regardless of who might buy it would

benefit a mill plant located as yours was at Pike City? A. Most as-uredly so.

Q. Why was it? A. In the first place it was more convenient to the mill than some other timber, and in the second place whenever individual owners had the property they could dispose of it if they wanted to.

Q. In selling out the [plany] afterwards would not the fact that the lands were in the hands of individual owners be an advantage to you? A. Yes, sir.

Q. Be an inducement for any one to go there and buy? A. Yes, sir.

Q. Because they wanted a chance to buy timber lands? A. Yes, sir.

Recross-Examination

By Mr. Youmans:

Q. Now, the reason Judge Read has just mentioned did not occur to you until he suggested it, did it? A. I can figure out a good many reasons that I would not think of all in a bunch. That is one of the reasons.

Q. It did not occur to you until he mentioned it, did it? A. I do not know, it possibly may have come to me before, but did not come to me at that particular time.

Q. Did you have it in mind at the time you loaned the money? A. It has been so long since I loaned the money I do not know what I did have in mind.

Q. Don't you know you never thought of it until he mentioned it to you? A. No, I do not know that I didn't think of it.

Q. You do not know whether you thought of it or
955 not? A. No, but I know it is a reason.

Q. I ask you if you had it in mind at the time you loaned the money? A. Now, as I say it has been so long ago since I loaned the money, I don't know what I had in mind.

Q. At the time you had some reason for lending it didn't you? A. Well, the reason I had was just as I gave in my previous statements.

Q. The one mentioned by Judge Read was not included in that? A. I don't know, I think possibly I may have had that reason that I failed to announce on this occasion.

Q. Was Judge Read present at the time, and did he suggest it to you? A. No, I had not the honor of knowing Judge Read at that time.

Q. At any rate that reason was so insignificant that it did not occur to you when you first spoke of your reasons, did it? A. Well, I could not say about that, I didn't think to mention it.

Q. Is it not a fact that it was so insignificant that it did not occur to you when mentioning the reasons for loaning the

money? A. I didn't think it was necessary to mention any more, I might have mentioned it if I had more time.

Q. Didn't you have time enough to mention it? A. I thought I had reasons enough.

Q. Who was pressing you for time? A. I thought you wanted me to get off on the train and I would help you out.

By Mr. Read:

Q. Didn't you say that if the parties bought it you would have an opportunity to buy it? A. I thought I would have as good a chance as anybody else to buy it.

Q. That was a fact, the land was in the market? A. Yes, sir.

956 Q. Your object in loaning the money was to get the land in the market? A. Yes, sir, that was exactly my idea all the way through to get the land in the market.

Q. At the time you had the conversation with Mr. Copelind? A. Yes, sir.

Signature Waived.

957 Uriel L. Clark, being recalled for further cross-examination, on his oath deposes and says as follows:

By Mr. Youmans:

Q. Didn't you produce at a certain hearing before certain officers of the Land Office a resolution purporting to be a copy of the resolution passed by the Martin-Alexander Lumber Co. with regard to the sale of the stock? A. Well, now I don't just recollect about that. All the papers I had are in the hands of our attorneys.

Q. A copy of the minutes? A. Whatever papers I had are in the hands of my attorneys, I don't know where they are. My attorney has handed me a copy of the minutes of the Martin-Alexander Lumber Co. furnished me by the secretary, A. V. Alexander, which I file herewith as a part of this deposition, marked Exhibit "K".

Q. When did you get that? A. I think on the 14th or 15th, of January 1901.

Q. The same day it was entered in the book? A. I think so.

Signature Waived.

It is agreed that the foregoing depositions may be read on the part of the defendants on the trial of the above entitled cause subject to exceptions for incompetency and irrelevancy only, that all matters of form are waived and the signatures thereto are also waived.

* * * * * * * * *

965 St. Louis, January 14th, 1901, No. 834.
Union Trust Company of St. Louis.
Pay to E B Martin, or order $27456.79/100 Twenty Seven Thousand Four Hundred Fifty Six & 79/100 Dollars.
Detroit Timber & Lumber Co.,
By U. L. Clark.

Exhibit B
A E M,

* * * * * * * * *

967 This Contract of Sale, Made and entered into this First day of March, 1901, by and between the Martin-Alexander Lumber Company, party of the first part, and the Detroit Timber & Lumber Company, party of the second part, Witnesseth:

That, the party of the first part, for and in consideration of the sum of Sixty thousand dollars, Thirty-five thousand dollars of which was paid to E. B. Martin and J. O. Means, on the 14th, day of January last, and Twenty-five thousand dollars of stock in the company of the party of the second part, is to be issued to A. V. Alexander and B. M. Alexander, as hereinafter mentioned, the party of the first part hereby transfers and delivers to the party of the second part, its entire saw-mill plant, its logging, tramroad and everything connected with it, lumber, logs, merchandise in store, book accounts and notes due it, as per statement and trial balance rendered January 1st, last.

The said party of the first part, for said consideration, also transfers and assigns to the said party of the second part, all of the timber contracts held by it, for timber on lands in Pike County, Arkansas, and which contracts were turned over to the party of the second part, January 14th, last, and also shown on the said statement and trial balance of January 1, 1901.

The party of the first part for said consideration, does hereby grant, bargain, sell and convey to the said party of the second part, all of its lands in Pike County, Arkansas, including lands from which timber has been cut off, as well as its uncut lands, deed- for which were turned over January 14, last.

The party of the second part agrees to pay all the debts of the Martin-Alexander Lumber Company, as per the said statement and trial balance of January 1st, last.

It is understood and agreed that the said property, shall be received into the company of the party of the second part, as $60,000, of paid up stock, Twenty-five thousand dollars of which shall be issued to A. V. Alexander and B. M. Alexander,
Exhibit D. A. E. M.

968 and they shall be entitled to all profits on it from January 15, 1901; the remainder is to be divided among the present stockholders as they may decide at the next meeting.

It is understood and agreed that all of the stock held by different parties in the Martin Alexander Lumber Co., shall be returned to the President of said company and placed in the stock book and duly cancelled and the book turned over to the President of the Detroit Timber & Lumber Co.

MARTIN ALEXANDER LUMBER CO.,
By U. L. Clark, Prest.
DETROIT TIMBER & LBR. CO.,
By U. L. Clark, Prest.

Attested by
A. V. Alexander,
Vice-Prest. & Secty.
March 11th, 1901.

State of Arkansas,
County of Pike—ss.

On this day appeared before me, a duly commissioned, qualified and acting Notary Public, the Martin Alexander Lbr. Co., per U. L. Clark, Prest., to me personally well known to be the grantor in the foregoing deed, and stated that he had executed the same for the considerations, uses and purposes therein mentioned and set forth.

Witness my hand and seal this 2nd day of May 1901.
[Seal] WILL CLAYTON,
Notary Public.

My Com. Expires Nov. 12, 1901.

* * * * * * * * *

1000 Martin-Alexander Lumber Company,
Yellow Pine Lumber,
Pike City, Ark., Jan. 8th, 1901.

Mr. U. L. Clark,
St. Louis, Mo.

Dear Sir: I am in receipt of yours 7th, and same noted. I will try and leave here this afternoon for the woods. Don't know whether I can get their woodsman today or not. We have made a list of all their lands this morning. Myself and Mr. Copeland their woodsman, according to our figures they have 6,040 acres uncut fee simple deeds, and 620 acres timber deeds uncut making in all 6,680 acres. Besides they claim about 650 thousand ft, in another township south of here uncut. I will go out and do the work just as soon as I can, but don't

think I will be quite through Monday, if not you will find me in the woods some where.

Yours Respect.

R. McDONALD.

Exhibit G 13,
A. E. M.,

1001 Detroit Timber & Lumber Company,
Manufacturers
Band Sawed Short Leaf Yellow Pine,
Copy. St. Louis, Jan. 9, 1901.

Mr. R. McDonald,
Pike City, Ark.

Dear Sir: I am in receipt of yours of the 8th, and note that you would start out in the woods to make further examination of the Martin-Alexander timber lands, that afternoon. I also note that you find that they have according to their plats 6,660 acres of uncut timber. Now, you state you do not know whether you will be able to get through with this by Monday night, and if you do not that I will find you in the woods somewhere. I would like to have this report by Monday night as I expect to be there then.

I am also in receipt of yours of the 7th, enclosing plat of the lands. The main thing I want to know is whether the Martin-Alexander Lumber Company has got timber enough to keep the mill going for the next three years. If not could there be some gotten close by and if such is the case and the outlook is all right, we might think favorably of buying out Martin-Alexander Lumber Co., and then we could proceed with investigation of the lands further north and west.

Yours respectfully,

U. L. CLARK.

1002 Lands Deeded to,
Detroit Timber & Lumber Co.,
By
The following Parties:—

Date of Deed	Name.	Description.					Patent. Number.	Patent. Date.
Apr. 3, 1901.	Rosa L Anderson	SE4 of SE4	Sec	27.	T. 6S	R. 25W.	19613	Feb 9, 1901
		SW4 of SW4	"	26	"	"		
" " "	W F Anderson,	SW4 of	"	35	"	"	19614	" " "
Apr. 17, "	Emmet Keebaugh	SW4 of	"	21	"	"	19622	" " "
" 22, "	B. F. Patterson	NE4 of	"	21	"	"	19621	" " "
" 1, "	C W Fuller,	NE4 of	"	20	"	"	19623	" " "
" 4, "	Henry P Hughes	NW4 of	"	21	"	"	19624	" " "
" 26 "	S. A. Fuller,	NW4 of	"	22	"	"	19628	" " "
May 9, "	Alvin Pry,	S2 of SW4	"	14	"	"	19629	" " "
Apr. 9, ("	G W Cooper	W2 of NE4	"	22	"	"	19630	" " "
		W2 of SE4	"	22	"	"		
Apr. 9, "	Willie Cooper,	E2 of SE4	"	22	"	"	19632	" " "
		SE4 of NE4	"	22	"	"		
		NE4 of NE4	"	27	"	"		

" 13, "	E Y Fuller,	N2 of SW4	"	22	"	"		19631	"	"	"
		SE4 of SW4	"	22	"	"					
		NE4 of NW4	"	27	"	"					
" " " "	Thomas Roberts	W2 of SE4	"	15	"	"		19633	"	"	"
		SE4 of SE4	"	15	"	"					
" " "	M C Roberts,	SW4 of	"	15	"	"		19634	"	"	"
" 3 "	L C Horne,	NE4 of	"	11	T 7S.	R 25W.		19639	"	"	"
" 1 "	W F Waits	NW4 of	"	11	"	"		19640	"	"	"
May 24, "	Chas. W Davis,	SE4 of	"	26	T 5S.	R 25W.		19647	Mar	23	"
Apr. 1, "	Jim S Pennington	SE4 of	"	20	"	"		19666	May	8	"
May 24, "	Mary E Davis,	SW4 of	"	25	"	"		19649	Mch	23	"
Apr. 1, "	J. V. Pennington,	NE4 of SE4	"	21	"	"		19667	May	8	"
Sep 17, "	Chas. W Mackey	N2 of NE4	"	23	T 7S.	R 25W.		19668	"	"	"
		N2 of NW4	"	23	"	"					
Apr. 1, "	Carrie M Hicks,	SW4 of SW4	"	34	T 6S.	R 25W.		19669	"	"	"
Apr. 22, "	D D Brunson	NE4 of	"	25	"	"		19650	Mch	23	"
		SE4 of	"	25	"	"		19648	"	"	"
		E2 of NW4	"	25	"	"		19646	"	"	"
		SW4 of NW4	"	25	"	"		"	"	"	"
		SE4 of NE4	"	26	"	"		"	"	"	"
Mch 27, "	Emma E Lintz	S2 of NE4	"	2	T 7S.	R 25W.					
" 28 "	Henry M Lintz	NW4 of NE4	"	12	"	"					
		N2 of NW4	"	12	"	"					
		SW4 of NW4	"	12	"	"					

Exhibit H A. E. M.

1003 Oak Park, Ill. July 5th, 1900.

Mr. Binger Herman,
General Commissioner, Land Office,
Washington, D. C.

Dear Sir: I hold receipt No. 19477 dated Oct. 13th, 1899 for the purchase of the S W 1/4 of the S E 1/4, and the S 1/2 of the S-W 1/4 of Section 13; and the N-W 1/4 of the N-W 1/4 of Section 24, all in Township 7 South, range 25 West, in Pike County, Arkansas.

And my wife holds receipt No. 19479 under the same date for the N 1/2 of the S-E 1/4, and the N 1/2 of the S-W 1/4 of Section 13, Township 7 South, range 25 West, in Pike County, Arkansas.

This having been eight months ago, we feel as though there has been sufficient time in which to have had patents issued to us for these two 160 acre lots of land; and you will confer a very great favor upon me if you will see to it personally that the patents are issued and sent to the land office at Camden, Ark.,

Owing to my poor health, I have been compelled to leave that section of the country, and I want to get my affairs all straightened out and this matter is of more importance to me than I can make you understand by letter. Please do not fail to give it your personal attention, and very much oblige.

Will you kindly write me about what time I may expect these patents. Yours very truly,

Exhibit I,
A. E. M.

1004 Voucher No. ———— ———— Dr.
Detroit Timber & Lumber Co.
St. Louis, Mo., Address ————

Date Invoice, Articles.

Correct: Approved for Payment:

———— ———— Secretary.

Disburs-ment,
Account. Dr. Cr.

Received of Detroit Timber & Lumber Co.
St. Louis, Mo.

For Account of Detroit Timber & Lumber Co., Pike City Ark.
———— Dollars
100

Payment in full for above account.
Any alteration voids this
Voucher. If not in ac-
cordance with your account, re-
turn for correction. Exhibit J A. E. M. (Over)

Voucher No. ————
Detroit Timber & Lumber Co.
St. Louis, Mo.

Due ..... $.....

This voucher, when dated and properly receipted by the person in whose favor it is made, becomes a sight draft for $..... payable through Lincoln Trust Company of St. Louis, Mo., within sixty days from ..... 190.. Will be paid by

Detroit Timber & Lumber Co.
.....,
President.

Exhibit J.

1005 Pike City, Ark., January 14, 1901.

1. "Resolved, that the Martin-Alexander Lumber Company does hereby sell all its personal and real property and all debts due it, to the Detroit Timber and Lumber Company, for the sum of Sixty Thousand ($60,000.00) Dollars cash

and the assumption of all the liabilities of this company, and that the said sum be divided among the stock holders of this company as follows:

To E. B. Martin, ...	$34,850.00
" Mrs. B. M. Alexander, ...	24,850.00
" A. V. Alexander, ...	150.00
" J. O. Means, ...	150.00

The said sums due the said E. B. Martin and J. O. Means are now paid to them in cash by the Detroit Timber and Lumber Company, and the said Mrs. B. M. Alexander and A. V. Alexander agree to defer the payment of the sums due them until their application for stock in the said Detroit Timber and Lumber Company is acted upon by that company.

2. Resolved that in order to relieve the said E. B. Martin who is a resident of Chicago, Illinois, from further attendance during the time necessary to effect a transfer of the said property so sold, his stock is transferred to U. L. Clark and the Detroit Timber and Lumber Company, and the said U. L. Clark is for the purpose of said transfer elected temporary president of this company instead of E. B. Martin, who has this day resigned."

The above is a true copy of the resolutions adopted by the Martin-Alexander Lumber Company,

A. V. ALEXANDER,
Secretary.

Exhibit K,
A. E. M.

Indorsed: Deposition for Defendants. Filed July 31, 1903. Notary fee $43.00 paid by Detroit Timber & Lumber Co. John M. Somervell, Clk.

* * * * * * * * *

1010 And on Aug. 3rd 1903, the same being a day of this court, the following was had:

United States of America, Complainant,
vs.
Detroit Timber & Lumber Co., a corporation under the laws of the State of Michigan, Martin-Alexander Lumber Company, a corporation under the laws of Arkansas, John H. Scott, Thomas J. Clements, Jim P Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph O Means, Archibald C Winslow, Caroline H Means, James F. Patterson, Emma F. Lintz, Bill D. Copeland, Henry M Lintz, Rosa L Anderson, William F Anderson, Gus C Copeland, Geo T Colston, Henry Jones, Bedford F Patterson, Emmett S Keebaugh, Chas

W Fuller, Henry P Hughes, Stephen A Fuller, Alvin Pry, Geo W Cooper, Ezekiel Y Fuller, Willis Cooper, Thomas Roberts, Mittie C Roberts, Lawrence C Horne, William F Waits, Sherman L Garrison, Barbary A Garrison, Seborn Z Moran, Charles W Davis, Emma J Moran, Jim S Pennington, Jennie V Pennington, Charles W Mackey, Carrie M Hicks and D D Brunson, Defendants.

This cause coming on to be heard, this 3rd day of August 1903, upon the pleadings, stipulations and proof, and Mr. James K. Barnes United States Attorney, and F A Youmans Assistant United States Attorney, having been heard on the part of the plaintiff, and Mr T C McRae, James F Read, W E Hemmingway and U M Rose and G B Rose on the part of the defendant, and the Court now being well and sufficiently advised, it is considered, ordered and adjudged, that the demurrer to the amendment to the Complaint be and the same is hereby overruled, and the several answers are considered as applying to the said amendment as per stipulation on file. And after due deliberation being had, it is ordered, adjudged and decreed that the said bill of complaint herein be, and the same is hereby dismissed with costs to the defendants to be taxed.

To all of which the plaintiff by its solicitors, at the
1011 time excepted. And it is further ordered by the court, that the temporary restraining order, heretofore issued in this cause, be extended for the period of thirty days, pending the application for appeal by plaintiff.

* * * * * * * * *

And on Aug 31st 1903, the same being a day of this court, the following was had:

United States of America, Complainant,
vs.
Detroit Timber and Lumber Company et al. Defendants.

On this day comes James K Barnes U S Attorney, and F A Youmans Assistant U S Attorney, Attorneys for the Plaintiff herein, and files herein prayer for appeal in this cause; which said prayer for appeal coming on to be heard is duly considered and granted. It is therefore considered and ordered by the Court, that the prayer for appeal herein is hereby granted.

United States of America, Complainant,
vs.
Detroit Timber and Lumber Company et al. Defendants.

On this 31st day of August 1903, comes James K Barnes United States Attorney for the Western District of Arkansas and for and on behalf of complainant moves the court for an

order continuing the injunction, in the above entitled cause, in force until such time as application can be made by complainant to the Circuit Court of Appeals for the Eighth Circuit, for an order continuing the injunction herein in force, pending the appeal.

And the Court being well and sufficiently advised in the premises, doth sustain said motion, It is therefore by the court ordered that the said injunction be continued in force until such time as application can be made on behalf of complainant for an order continuing the injunction in force pending the appeal in this cause; the time however for such application not to be longer than six months from the date of the rendition of the decree in this cause, to-wit—the 3rd day of August 1903.

* * * * * * * * *

1012 In the Circuit Court of the United States, for the Western District of Arkansas, Texarkana Division.

United States of America, Plaintiff,
vs.
Detroit Timber & Lumber Company, et al. Defendants.

Assignment of Errors.

Comes the Complainant and files the following assignment of errors upon which it will rely in its appeal from the decree made by this Honorable Court, in the above entitled cause, on the day of August 1903.

(1). The Court erred in refusing to hold that prior to the entries made at the United States Land Office at Camden, Arkansas, by defendants, John H Scott, Thomas J Clements, Jim P Copelend, John H Wilson, Robbie J Hughes, Robertson C Gregory, Martha Gregory, Josepa O Means, Archibald G Winslow, Caroline H Means, Emma Winslow, James F Patterson, Emma E Lintz, Bill D Copeland, George T Colston, Henry Jones, Henry M Lintz, Rosa L Anderson, William F Anderson, Gus G Copelend, Bedford F Patterson, Emmett S Keebaugh, Charles W Fuller, Henry P Hughes, Stephen A Fuller, Alvin Pry, George W Cooper, Ezekiel Y Fuller, Willis Cooper, Thomas Roberts, Mittie C Roberts, Lawrence C Horne, William F Waits, Sherman L Garrison, Barbary A Garrison, Seborn Z. Moran, Charles W Davis, Bill Dorsey, Mary F Davis, Emma J Moran, Jim S Pennington, Jennie V Pennington, Charles M Mackey, and Carrie M Hicks, an agreement was entered into by and between each and every of said entrymen, and their co-defendant, the Martin-Alexander Lumber Company, that the entry made by each of them respectively, should be made for the benefit of the Martin-Alexander Lumber Company in order

that it might obtain the timber growing on the lands covered by said entries.

(2). The Court erred in refusing to hold that the entries, and each and every one of them, made at the United States Land Office at Camden, Arkansas, by the defendants, John H Scott, Thomas J Clements, Jim P Copeland, John H Wilson, Robbie J Hughes, Robertson C Gregory, Martha Gregory, Joseph O Means, Archibald G Winslow, Caroline H Means, Emma Winslow, James F Patterson, Emma F Lintz, Bill D Copeland, Henry M Lintz, Rosa L Anderson, William F Anderson, Gus G. Copeland, George T Colston, Henry Jones, Bedford F Patterson, Emmett S Keebaugh, Charles W Fuller, Henry P Hughes, Stephen A Fuller, Alvin Pry, George W Cooper, Ezekiel Y Fuller, Willis Cooper, Thomas Roberts, Mittie C Roberts, Lawrence C Horne, William F Waits, Sherman L Garrison, Barbary A Garrison, Seborn Z. Moran, Charles W Davis, Bill Dorsey, Mary F Davis, Emma J Moran, Jim S Pennington, Jennie V Pennington, Charles W Mackey and Carrie M Hicks, respective-
1013 ly, were made on speculation.

(3) The Court erred in refusing to hold that the defendant Detroit Timber & Lumber Company, prior to its purchase of timber deeds or contracts from its co-defendant, Martin-Alexender Lumber Company, had knowledge of the fact that the entries of lands covered by said timber deeds or contracts were made at the United States Land Office under an agreement between said Martin-Alexander Lumber Company and each and every of the entrymen, that the entry made by each of them respectively should be made for the benefit of said Martin-Alexander Lumber Company in order that it might obtain the timber standing and growing on said entry;

(4). The Court erred in refusing to hold that the Detroit Timber and Lumber Company, prior to its purchase [if] timber deeds or contracts from its co-defendant Martin-Alexander Lumber Company had knowledge of the fact that the entries of lands covered by said timber deeds or contracts were made at the United States Land Office at Camden Arkansas, by each and every of the entrymen on speculation.

(5). The court erred in refusing to hold that the Detroit Timber and Lumber Company was not an innocent purchaser of the lands and the contracts for timber from lands described in complainants bill.

(6). That the Court erred in dismissing complainant's bill.

In order that the foregoing assignment of errors made, be and appear of record the complainant presents the same to the

court and prays that such disposition be made thereof, in accordance with law and the Statutes of the United States, in such case made and provided, and Complainant prays a reversal of the decretal order and decree of dismissal made and entered by said Court.

JAMES K BARNES,
U S Attorney.
F A YOUMANS,
Assistant U S Attorney.
Solicitors for Complainant.

Indorsed: United States vs. Detroit Timber & Lumber Co. Assignment of Errors. Filed August 29th 1903 at 9:45 A. M. John M Somervell, Clerk.

1014 In the Circuit Court of the United States for the Western District of Arkansas, Texarkana Division.

United States of America, Complainant,
vs.
Detroit Timber & Lumber Company et al., Defendants.

Petition for Appeal.

The above named Complainant conceiving itself aggrieved by the order and decree made and entered of record in the above entitled cause on the 3rd day of August 1903, wherein and whereby it was ordered, adjudged and decreed that Complainant's bill herein be dismissed, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the assignment of errors filed herein, and it prays that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

JAMES K. BARNES,
U S Attorney,
F A YOUMANS,
Assistant U S Attorney.
Solicitors for Complainant.

Indorsed: United States vs. Detroit Timber and Lumber Co et al. Petition for Appeal. Filed August 31st 1903. John M. Somervell, Clerk.

August 31 1903 Appeal granted.
JNO H ROGERS, Judge.

* * * * * * * * *

1015 Filed Dec 2 1903. John D. Jordan, Clerk.

433 *Appearance of Mr. J. C. Pinnix as counsel for certain appellees.*

And on the second day of December, A. D. 1903, the appearance of Mr. J. C. Pinnix, as counsel for certain appellees, was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

In the United States circuit court of appeals for the eighth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER AND LUMBER COMPANY et al., appellees. } Entry of appearance.

The following appellees in the above-entitled cause, to wit, Martin Alexander Lumber Company, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Emma E. Lintz, Bill D. Copeland, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Gus G. Copeland, George T. Colston, Henry Jones, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, Ezekiel Y. Fuller, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Charles W. Davis, Bill Dorsey, Mary E. Davis, Jim S. Pennington, Jennie V. Pennington, and Carrie M. Hicks, hereby waive citation in said cause and enter their appearance in said court in the appeal from the circuit court in chancery of the United States for the Texarkana division of the western district of Arkansas.

J. C. PINNIX,
Attorney for the above-named Appellees.

November 17th, 1903.

434 (Endorsed:) No. 2009. United States vs. Detroit Timber & Lumber Company et al. Appearance for Martin-Alexander Lumber Company et al. Filed Dec. 2, 1903. John D. Jordan, clerk.

Appearance of Mr. James K. Barnes and Mr. F. A. Youmans for appellant.

And on the fifth day of December, A. D. 1903, the appearance of Mr. James K. Barnes and Mr. F. A. Youmans for appellant was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER AND LUMBER COMPANY ET AL. } No. 2009.

The clerk will enter our appearance as counsel for the appellant.

JAMES K. BARNES.
F. A. YOUMANS.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 2009. United States of America, appellant, vs. Detroit Timber and Lumber Co. et al. Appearance. Filed Dec. 5, 1903, John D. Jordan, clerk. James K. Barnes, F. A. Youmans, counsel for appellant.

Appearance of Mr. James F. Read, for appellees.

And on the fifth day of December, A. D. 1903, the appearance of Mr. James F. Read for appellees was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
435 DETROIT TIMBER AND LUMBER COMPANY et al. } No. 2009.

The clerk will enter my appearance as counsel for the appellees.

JAS. F. READ.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 2009. United States of America, appellant, vs. Detroit Timber and Lumber Co. et al. Appearance. Filed Dec. 5, 1903, John D. Jordan, clerk. James F. Read, counsel for appellees.

Petition for order to continue injunction in force.

And on the seventh day of December, A. D. 1903, a petition for an order to continue injunction in force was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

In the United States circuit court of appeals for the eighth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER & LUMBER COMPANY ET AL., appellees.

To the honorable the judges of the United States circuit court of appeals for the eighth circuit:

Comes James K. Barnes, attorney for the United States for the western district of Arkansas, and, for and on behalf of the United States, represents to the court that on the 7th day of April, 1902, a suit in chancery was brought by the United States of America in the circuit court of the United States for the Texarkana division of the western district of Arkansas against The Detroit Timber & Lumber Company et al., to set aside certain patents, deeds, and leases for certain lands set out in the bill of complaint in said cause, and that on the same day the said court, upon the application of complainant, issued an injunction restrain-
436 ing the said Detroit Timber & Lumber Company, its agents, servants, and employees, and all persons acting by and under its

authority, from cutting and removing any timber standing, growing, and being on said land.

That on the 3rd day of August, 1903, said circuit court in chancery rendered a decree in said cause and dismissed said bill for want of equity, and the said injunction was by order of said court continued in force for thirty days pending application by the said United States for appeal.

That on the 31st day of August, 1903, an appeal from said decree was granted said United States by said court, and said injunction was continued in force until such time as an application could be made to this court for that purpose, not later, however, than six months from the date of the rendition of said decree, to wit, the 3rd day of August, 1903.

Copies of said orders of injunction and subsequent orders continuing the same in force are hereto attached.

That the transcript of the record in said cause, together with waivers of citation and entries of appearance of each and every of the defendants therein who appeared or against whom an appeal was taken, have been filed with the clerk of this court.

Wherefore the said James K. Barnes, for and on behalf of the said United States, prays that an order be made by your honors continuing said injunction in force until the final disposition of this cause, or until the further order of this court.

JAMES K. BARNES,
U. S. Attorney for the Western District of Arkansas.

In the United States circuit court of appeals for the eighth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER & LUMBER COMPANY ET AL., appellees.
} Notice.

To the said Detroit Timber & Lumber Company, or its solicitors of record:

437 You are hereby notified that on the 7th day of December, 1903, or as soon thereafter as practicable, application will be made to the United States circuit court of appeals for the eighth circuit at St. Louis, Missouri, for an order to continue in force the injunction issued by the circuit court of the United States for the Texarkana division of the western district of Arkansas, against the said Detroit Timber & Lumber Company, in the case of the United States vs. said Detroit Timber & Lumber Company et al.

JAMES K. BARNES,
U. S. Attorney, Western District of Arkansas.

Service of the above notice is accepted this 30th day of November, 1903.

READ & MCDONOUGH,
Solicitors for Detroit Timber & Lumber Company.

In the circuit court of the United States for the western district of Arkansas, Texarkana division.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
DETROIT TIMBER AND LUMBER COMPANY et al., defendants.

Whereas in the above-named cause, it has been made to appear upon the bill of complainant filed herein, that a writ of injunction preliminary to the final hearing is proper, and that prima facie the complainant is entitled thereto, enjoining the defendant Detroit Timber and Lumber Company from the acts complained of and threatened to be committed.

Therefore, complainant's application for such restraining order is hereby granted.

Now, therefore, it is ordered that you, the said Detroit Timber and Lumber Company, one of the defendants herein, your agents, servants, and employees, and all persons acting by and under your authority or direction be, and you are hereby, specially restrained and enjoined
438 from cutting and removing any timber standing, growing, or being upon the following-described lands in Pike County, Arkansas, to wit:

NE. ¼ sec. 1, Tp. 7 S., R. 25 W.
N. ½ SW. ¼ and N. ½ SE. ¼ sec. 18, Tp. 7 S., R. 24 W.
S. ½ SW. ¼ sec. 17, Tp. 7 S., R. 24 W.
S. ½ SE. ¼ sec. 18, Tp. 7 S., R. 24 W.
S. ½ SW. ¼ sec. 18, Tp. 7 S., R. 24 W.
W. ½ NW. ¼ sec. 19, Tp. 7 S., R. 24 W.
N. ½ SW. ¼ sec. 2, Tp. 7 S., R. 25 W.
NE. ¼ SE. ¼ sec. 3, Tp. 7 S., R. 25 W.
E. ½ NW. ¼, NE. ¼ SW. ¼, and NW. ¼ SE. ¼ sec. 1, Tp. 7 S., R. 25 W.
S. ½ SW. ¼ and SW. ¼ SE. ¼ sec. 1, Tp. 7 S., R. 25 W.
SW. ¼ SE. ¼ and S. ½ SW. ¼ sec. 13, Tp. 7 S., R. 25 W.
NE. ¼ NW. ¼ section 24, Tp. 7 S., R. 25 W.
E. ½ NE. ¼ and NE. ¼ SE. ¼ section 24, Tp. 7 S., R. 25 W.
SE. ¼ SE. ¼ section 13, Tp. 7 S., R. 25 W.
N. ½ SE. ¼ and N. ½ SW. ¼ section 13, Tp. 7 S., R. 25 W.
N. ½ SE. ¼ section 15, Tp. 7 S., R. 25 W.
N. ½ SW. ¼ section 14, Tp. 7 S., R. 25 W.
S. ½ SW. ¼ section 14, Tp. 7 S., R. 25 W.
S. ½ SE. ¼ section 15, Tp. 7 S., R. 25 W.
S. ½ NE. ¼ section 2, Tp. 7 S., R. 25 W.
E. ½ SE. ¼, SW. ¼ SE. ¼, and SE. ¼ SW. ¼ section 13, Tp. 7 S., R. 25 W.
NW. ¼ NE. ¼, N. ½ NW. ¼, and SW. ¼ NW. ¼ section 12, Tp. 7 S., R. 25 W.
SW. ¼ SW. ¼ section 26, Tp. 6 S., R. 25 W.
SE. ¼ SE. ¼ section 27, Tp. 6 S., R. 25 W.
SW. ¼ section 35, Tp. 6 S., R. 25 W.
S ½ NW. ¼ and N. ½ SW. ¼ section 23, Tp. 7 S., R. 25 W.
E. ½ NW. ¼ and NW. ¼ NW. ¼ section 17, Tp. 7 S., R. 24 W.

W. ½ NE. ¼ and E. ½ NW. ¼ section 19, Tp. 7 S., R. 24 W.
NE. ¼ section 21, Tp. 6 S., R. 25 W.
SW. ¼ section 21, Tp. 6 S., R. 25 W.
NE. ¼ section 20, Tp. 6 S., R. 25 W.
NW. ¼ section 21, Tp. 6 S., R. 25 W.
NW. ¼ section 22, Tp. 6 S., R. 25 W.
S. ½ SW. ¼ section 14, Tp. 6 S., R. 25 W.
W. ½ NE. ¼ and W. ½ SE. ¼ section 22 Tp. 6 S., R. 25 W.
439 N. ½ SW. ¼ and SE. ¼ SW. ¼ section 22, Tp. 6 S., R. 25 W.
NE. ¼ NW. ¼ section 27, Tp. 6 S., R. 25 W.
E. ½ SE. ¼ and SE. ¼ NE. ¼ section 22, Tp. 6 S., R. 25 W.
NE. ¼ NE. ¼ section 27, Tp. 6 S., R. 25 W.
W. ½ SE. ¼ and SE. ¼ SE. ¼ section 15, Tp. 6 S., R. 25 W.
SW. ¼ section 15, Tp. 6 S., R. 25 W.
NE. ¼ section 11, Tp. 7 S., R. 25 W.
NW. ¼ section 11, Tp. 7 S., R. 25 W.
NE. ¼ NE. ¼ section 22, Tp. 6 S., R. 25 W.
N. ½ NW. ¼ and NW. ¼ NE. ¼ section 23, Tp. 6 S., R. 25 W.
SW. ¼ NW. ¼ and N. ½ SW. ¼ section 23, Tp. 6 S., R. 25 W.
E. ½ NW. ¼ and SW. ¼ NW. ¼ section 25, Tp. 6 S., R. 25 W.
SE. ¼ NE. ¼ section 26, Tp. 6 S., R. 25 W.
SE. ¼ section 26, Tp. 6 S., R. 25 W.
SE. ¼ section 25, Tp. 6 S., R. 25 W.
SW. ¼ section 25, Tp. 6 S., R. 25 W.
NE. ¼ section 25, Tp. 6 S., R. 25 W.
SE. ¼ section 20, Tp. 6 S., R. 25 W.
NE. ¼ SE. ¼ section 21, Tp. 6 S., R. 25 W.
N. ½ NE. ¼ and N. ½ NW. ¼ section 23, Tp. 6 S., R. 25 W.
SW. ¼ SW. ¼ section 34, Tp. 6 S., R. 25 W.

until the further order of this court.

It is further ordered that a copy of this order certified under the hand of the clerk and seal of this court be served on the defendant, Detroit Timber and Lumber Company, to be restrained thereby.

It is further ordered that this injunction is temporary, and that the defendant, Detroit Timber and Lumber Company, may appear and show cause, if it can, on the 19th day of April, 1902, why this temporary restraining order hereby granted, should not be continued.

Dated at Fort Smith, in the western district of Arkansas, this fifth day of April, A. D. 1902.

JNO. H. ROGERS,
United States District Judge for the Western District of Arkansas.

440 UNITED STATES OF AMERICA, COMPLAINANT,
vs.
DETROIT TIMBER & LUMBER CO., A CORPORATION under the laws of the State of Michigan; Martin-Alexander Lumber Company, a corporation under the laws of Arkansas; John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, James F. Patterson, Emma E. Lintz, Bill D. Copeland, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Gus G. Copeland, George T. Colston, Henry Jones, Bedford F. Patterson, Emmett S. Keebaugh, Chas. W. Fuller, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Sherman L. Garrison, Barbary A. Garrison, Seborn Z. Moran, Charles W. Davis, Emma J. Moran, Jim S. Pennington, Jennie V. Pennington, Charles W. Mackey, Carrie M. Hicks, and D. D. Brunson, defendants.

This cause coming on to be heard this 3rd day of August, 1903, upon the pleadings, stipulations, and proof, and Mr. James K. Barnes, United States attorney, and F. A. Youmans, assistant United States attorney, having been heard on the part of the plaintiff, and Mr. T. C. McRae, James F. Read, W. E. Hemingway, and U. M. Rose and G. B. Rose, on the part of the defendant, and the court now being well and sufficiently advised, it is considered, ordered, and adjudged that the demurrer to the amendment to the complaint be, and the same is hereby, overruled, and the several answers are considered as applying to the said amendment as per stipulation on file. And after due deliberation being had it is ordered, adjudged, and decreed that the said bill of complaint herein be, and the same is hereby, dismissed with costs to the defendants to be taxed.

441 To all of which the plaintiff, by its solicitors, at the time excepted.

And it is further ordered by the court that the temporary restraining order heretofore issued in this cause be extended for the period of thirty days, pending the application for appeal by plaintiff.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
DETROIT TIMBER & LUMBER COMPANY et al., defendants.

On this 31st day of August, 1903, comes James K. Barnes, United States attorney for the western district of Arkansas, and for and on behalf of complainant moves the court for an order continuing the injunction in the above-entitled cause in force until such time as application can be made by complainant to the circuit court of appeals for the eighth

circuit for an order continuing the injunction herein in force pending the appeal.

And the court being well and sufficiently advised in the premises doth sustain said motion.

It is therefore by the court ordered that the said injunction be continued in force until such time as application can be made on behalf of complainant for an order continuing the injunction in force pending the appeal in this cause, the time, however, for such application not to be longer than six months from the date of the rendition of the decree in this cause, to wit, the 3rd day of August, 1903.

(Endorsed:) No. 2009. United States of America vs. Detroit Timber & Lumber Company et al. Petition for order to continue injunction in force. Filed Dec. 7, 1903. John D. Jordan, clerk.

Order continuing injunction in force.

And on the seventh day of December, A. D. 1903, in the record of the proceedings of said circuit court of appeals is an order continuing injunction in force in said cause, in the words and figures following, to wit:

442 United States circuit court of appeals, eighth circuit. December term, 1903.

MONDAY, *December 7, 1903.*

THE UNITED STATES OF AMERICA, appellant, *vs.* DETROIT TIMBER AND LUMBER COMPANY et al.	No. 2009. Appeal from the circuit court of the United States for the western district of Arkansas.

This cause came on this day to be heard upon the petition of the appellant for an order continuing in force the injunction granted by the circuit court during the pendency of the appeal in this court.

And it appearing that due and timely notice of the presentation of this petition has been accepted by counsel for appellee, The Detroit Timber and Lumber Company, and there being no appearance or objection thereto, it is now here ordered by this court that said petition be, and the same is hereby, granted; and that the injunction heretofore granted by the circuit court in this cause be, and the same is hereby, continued in full force and effect pending the appeal in this court, or until the further order of this court.

December 7, 1903.

Appearance of Messrs. Rose, Hemingway & Rose for appellees.

And on the twenty-eighth day of December, A. D. 1903, the appearance of Messrs. Rose, Hemingway & Rose for appellees was filed in

the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER AND LUMBER COMPANY ET AL. } No. 2009.

443 The clerk will enter my appearance as counsel for the appellees.

U. M. ROSE.
W. E. HEMINGWAY.
G. B. ROSE.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 2009. The United States of America, appellant, *vs.* Detroit Timber and Lumber Co. et al. Appearance. Filed Dec. 28, 1903, John D. Jordan, clerk. U. M. Rose, W. E. Hemingway, G. B. Rose, counsel for appellees.

Appearance of Mr. Fred A. Maynard for appellant.

And on the twenty-fifth day of March, A. D. 1904, the appearance of Mr. Fred A. Maynard for appellant was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

United States circuit court of appeals. Eighth circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER AND LUMBER COMPANY ET AL. } No. 2009.

The clerk will enter my appearance as counsel for the appellant.

FRED A. MAYNARD,
Special U. S. Atty.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 2009. The United States of America, appellant, *vs.* The Detroit Timber and Lumber Co. et al. Appearance. Filed Mar. 25, 1904, John D. Jordan, clerk. Fred A. Maynard, counsel for appellant.

Argument commenced.

And on the sixth day of May, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an entry in said cause, in the words and figures following, to-wit:

444 United States circuit court of appeals, eighth circuit. May term, 1904.

FRIDAY, *May 6, 1904.*

THE UNITED STATES OF AMERICA, appellant, *vs.* DETROIT TIMBER AND LUMBER COMPANY et al. } No. 2009. Appeal from the circuit court of the United States for the western district of Arkansas.

This cause having been called for hearing in its regular order, Judge Van Deventer, being disqualified, retires and takes no part in the hearing or decision of this cause, thereupon argument was commenced by Mr. F. A. Youmans for appellant, continued by Mr. W. E. Hemingway and Mr. James F. Read for appellees, and the hour for adjournment having arrived further argument is postponed until to-morrow.

Order of submission.

And on the seventh day of May, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an order of submission in this cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit. May term, 1904.

SATURDAY, *May 7, 1904.*

THE UNITED STATES OF AMERICA, appellant, *vs.* DETROIT TIMBER AND LUMBER COMPANY et al. } No. 2009. Appeal from the circuit court of the United States for the western district of Arkansas.

This cause having been called for further hearing, argument was continued by Mr. James F. Read for appellees and concluded by Mr. Fred A. Maynard for appellant.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

445 *Opinion.*

And on the twenty-eighth day of July, A. D. 1904, an opinion of said circuit court of appeals was filed in said cause, in the words and figures following, to wit:

446 United States circuit court of appeals, eighth circuit. May term, A. D. 1904.

THE UNITED STATES OF AMERICA, appellant, *vs.* DETROIT TIMBER & LUMBER COMPANY et al., appellees. } No. 2009. Appeal from the circuit court of the United States for the western district of Arkansas.

Mr. F. A. Youmans and Mr. Fred A. Maynard (Mr. James K. Barnes was with them on the brief) for appellant.

Mr. W. E. Hemingway and Mr. James F. Read (Mr. Thomas C. McRea, Mr. J. B. McDonough, Mr. U. M. Rose, Mr. George B. Rose, and Mr. J. C. Pinnix were with them on the brief) for appellees.

Before Sanborn and Hook, circuit judges, and Amidon, district judge.

SYLLABUS.

1. Government lands—Title of bona fide purchaser after patent unassailable in equity.

The title of a bona fide purchaser of lands subsequent to the issue of the patents is superior to the equitable claim of the United States to avoid the patents and the title under them for fraud or error in the issue of the former.

2. Same—Purchasers under receiver's final receipts upon which patents subsequently issue may be bona fide purchasers.

Purchasers in good faith, without notice, for value, of the equitable title evidenced by receivers' final receipts upon which patents subsequently issue, have a complete defense of a bona fide purchase unassailable by a suit of the United States to avoid the patents and the titles under them for fraud, perjury, or error, in the procurement of the former.

447 3. Same—Receiver's final receipts—Notice to purchasers.

Receivers' final receipts are notice to purchasers of the equitable title they evidence, that they are voidable by the land department for fraud or error at any time before the patents issue upon them, but they are not notice that the equitable titles they disclose were procured by fraud, perjury, or irregularity. On the other hand, they are prima facie evidence that the lands they describe were honestly and regularly entered and that the entrymen who obtained them are entitled to the patents for the land.

4. Equity—Rights of Government and of individuals the same in.

The equities of the United States appeal to a court of chancery with the same, but with no greater or less force than those of an individual in like circumstances.

5. Equity will not deprive bona fide purchaser of equitable estate of subsequently acquired legal estate.

Where equities are equal, the law prevails.

A court of equity will not interfere at the suit of a holder of a prior equitable title or claim to deprive an innocent purchaser for value of a junior equitable estate, of a legal estate, or advantage which he has subsequently bought or obtained after notice.

6. Bona fide purchaser—Duty of inquiry.

Where a vendor presents conveyances to himself prima facie valid and assures the purchaser that his title under them is perfect, no duty to investigate farther is imposed upon the buyer in the absence of other facts and circumstances suggesting investigation.

7. Defense of bona fide purchaser—Order of acquisition of elements immaterial.

The concurrence of the essential elements of good faith, absence of notice, payment of value, and legal estate in the purchaser at one time constitutes a complete defense of a bona fide purchase. The order in which these elements were acquired is not material.

STATEMENT.

This is a suit to avoid 44 patents issued under the stone and timber act of June 3, 1878 (20 Stat., 89; 2 U. S. Comp. St., 1901, 1545), and all conveyances of the patented lands or of the timber upon them. The patentees and their immediate and remote grantees are defendants and appellees. The suit was commenced on April 5, 1902. The United States alleged in its amended bill that each of the patentees agreed before entering the land that the entry should be made for the Martin-Alexander Lumber Company, a corporation of Arkansas, that if no such agreement was made each patentee made his or her entry on speculation; that immediately after the lands were entered each of the entrymen and each of the entry women, with the exception of three, conveyed the timber growing on his or her land to the Martin company; that patents were issued to all these lands between February 23, 1900, and May 9, 1901, and that on January 14, 1901, the Martin company sold and assigned all the contracts for the timber on the lands to the Detroit Timber and
448 Lumber Company, a corporation of Michigan, which had knowledge of the character of the entries and of the frauds which had been perpetrated in making them. The Detroit company answered that the lands were regularly and lawfully entered and patented; that forty-one of the patentees sold the timber on their lands to the Martin company shortly after they entered them, and that on January 14, 1901, it purchased the timber contracts and all the other property of the Martin company. It denied that the lands were entered on speculation and that any agreement had been made that any of them should be entered for the benefit of the Martin company. It denied that it had any notice or knowledge that any of the lands had been fradulently entered before it purchased and paid for the timber contracts or before the lands were patented, and averred that it bought and paid value for them in good faith without notice of any fraud or defect in the title to them. The answer of the Martin-Alexander company presents the same issues as that of the Detroit company. The answers of the other defendants, if there were such, do not appear in the record, because the land without the timber is of no value. The salient facts disclosed by the evidence at the final hearing were these: The Martin-Alexander Lumber Company had a sawmill in the vicinity of the lands which are the subject of this controversy and it was desirous of obtaining timber to manufacture into lumber. E. B. Martin owned 58½% of the stock of this corporation and, with the exception of one share, A. V. Alexander controlled all of the remainder, which was owned by himself, his wife, and J. O. Means. Copeland was an employee of the company and an intelligent and influential man. He obtained a copy of the act of June 3, 1878, consulted with one of the officers of the local land office relative to its proper construction, and told Alexander and Martin that he knew honest men who he thought would enter land of the Government under this act if they could borrow the money to pay for it. Martin replied that he would loan such men money for that purpose. The stumpage value of the timber was fifty cents per thousand feet and the Martin company was offering and paying that price. At this price the average value of the timber on each 160 acres of this land was about $40 in excess of the Government's price

for the lands, which was $2.50 per acre, so that an entry was likely to entail no loss and might yield the entryman some profit. Copeland informed some of his acquaintances of this situation and of the law and asked them if they would like to enter some of the land. Others applied to him for this information and he imparted it. The men and women thus informed made the entries upon which the patents in suit are based. They were poor and unable to pay for the land without borrowing money. Copeland assisted them to select the land and to make their entries. They made two journeys to the local land office, one to make their applications and one to pay for the land and obtain their final receipts. The Martin company paid their traveling expenses upon these trips and the fees for the publication of the notices required by the statute. Twenty-five of the forty-four patentees were employees of the Martin company and ten were wives of employees. When the time came to pay for the lands the company loaned to each one of the patentees the amount required for that purpose and he or his companion or agent paid for the land and obtained the final receipt.

449 Within a few days after the final receipt was obtained he made a promissory note for the amount he had paid for the land and interest at eight per cent. per annum. He then made a written agreement with the Martin company that in consideration of one dollar and of the covenants recited therein he "has bargained, sold and conveyed" unto the company all the timber and trees upon the land and the right to enter and take them, that the company will pay him fifty cents per thousand feet scale measure for the lumber in the trees, that it has paid him the amount which he had borrowed and paid for the land, and that it will pay him the balance beyond that amount and eight per cent. interest in monthly payments as the timber is cut and removed from the land. Upon the execution of this contract the note was cancelled and surrendered. The transaction with all the entrymen but two and with all the entrywomen but one took the form which has been described. Two of the entrymen and one of the entrywomen refused to give notes or make timber contracts, although they borrowed the money and used it to pay for their lands. These three defendants entered their land July 5, 1900, and in April, 1901, they sold and conveyed it to the Detroit company, through an agent of the latter, for the amount of their debts for the borrowed money and $75 each. The forty-four entries were made at various times between August 21, 1899, and September 6, 1900, and the timber contracts were made immediately after the respective entries were completed. Patents were issued for all these lands prior to May 9, 1901. Thirteen of these patents were issued before January 14, 1901, and forty before May 1, 1901. On January 14, 1901, the Detroit Timber and Lumber Company purchased all the property of the Martin company for $60,000 and the assumption of its debts. The office and place of business of the Martin company was in Pike City, Arkansas, that of the Detroit company in St. Louis, Missouri, and U. L. Clark was its president. About December 20, 1900, Alexander went to St. Louis and applied to Clark to purchase the property of the Martin company for the Detroit company. He requested Clark to purchase Martin's interest and to let him retain his interest. Clark declined and told him that the Detroit company would not purchase unless it could buy the

entire property. Alexander then asked to be permitted to take stock in the Detroit company for his interest. Clark replied that the latter company had no stock to sell, that he could not promise any, and that the purchase must be of the entire property of the Martin company for cash, but that the Detroit company might increase its stock, and if it did so it was possible that Alexander might obtain some. Alexander thereupon agreed that the entire property should be sold, and that he would sell his interest for cash at the same rate the Detroit company should purchase Martin's interest, if the latter company did not increase its stock and pay him in that. Thereupon Clark sent the Detroit company's inspector to Arkansas and he examined the lands and reported the amount of timber on them. Clark then went to Arkansas and agreed with Martin to pay him $35,000 for his interest and that of J. O. Means on the basis of $60,000 for the entire property. Thereupon, on January 14, 1901, the board of directors of the Martin company resolved that it sold all its property to the Detroit company for $60,000 cash and the assumption of its liabilities, that the $60,000 should be divided among its stockholders in this way: to E. B. Martin, $34,850; to Mrs. B. M. Alexander, $24,850;
450 to A. V. Alexander, $150; to J. O. Means, $150; that the sums due Martin and Means were then paid in cash by the Detroit company; that the payment of the sums due the Alexanders was deferred until their application for stock of the Detroit company was determined, and that to relieve Martin, who resided in Chicago, from further attendance his stock was transferred to Clark and to the Detroit company, and that Clark was elected temporary president of the Martin company in the place of Martin, who resigned. The forty-one timber contracts and deeds of other lands were then turned over to the Detroit company. The Martin company owed Martin $17,456.79, so that he was entitled to receive about $52,000 as his share of the proceeds of the sale. Clark gave him on that day in the form of a check of the Detroit company $27,456.79, and he went to St. Louis with him immediately and caused the Detroit company to assign to him a promissory note of the Bodcau Lumber Company for $25,000, which it owned. As soon as practicable after this sale the affairs of the Martin company were wound up. Clark disliked the trouble of keeping an account of the timber cut on the lands covered by the timber contracts, and between April 1, 1901, and September 10, 1901, he caused the Detroit company to procure conveyances to it of the title to the lands held by twenty-four of the patentees who had made timber contracts and from the three who had not made such contracts, so that by September 10, 1901, it held the legal title to the lands of twenty-seven of the forty-four patentees. The Detroit company paid from $6.25 to $75 for each of these deeds, but it paid $25 for each of eighteen of them. In fulfilment of the sale of January 14, 1901, the Detroit company increased its stock, and on April 22, 1901, issued stock of the par value of $25,000 to the Alexanders in place of the cash due them from the sale. A formal deed of all its property by the Martin company to the Detroit Company, dated March 1, 1901, and acknowledged May 2, 1901, was made and delivered on the latter date to the Detroit company. Clark was not acquainted in Arkansas when he made this purchase. The deeds of the lands and the timber contracts were turned over to him. The timber on the lands covered by the timber contracts

cost the Martin company about $18,000, and this timber was but a part of the property for which the Detroit company paid $60,000. Martin and Alexander told Clark when he made the purchase that all the people under whom the Martin company held land or timber had patents or final receipts for their lands and that the company's title to the timber was perfect. He believed their statements, had no suspicion that they were not true, and made no farther investigation of the titles. He always calculated that the title was all right if the party had a final receipt. Neither Clark nor any of the officers of the Detroit company ever had any knowledge or suspicion that there was any fraud in the procurement, or any defect in the title of any of the forty-four patentees or in the title the company purchased until the last of September or the first of October, 1901, more than four months after it had paid all this consideration and had received its deed for the property, and more than four months after the United States had issued its patents to all the lands. Upon this state of facts the circuit court found that no one of the patentees entered his or her land on speculation or made any agreement whereby the title to it should inure to anyone except himself or herself and dismissed the bill. The Government challenges the decree of dismissal by this appeal.

451 Sanborn, circuit judge, after stating the case as above, delivered the opinion of the court.

This is a suit in equity to enforce a forfeiture of the purchase price which the United States has received for certain of its lands and to avoid the patents which constituted the consideration for the payment of this price.

The act of June 3, 1878 (20 Stat., 89; 2 U. S. Comp. St. 1901, page 1545), provides that upon certain conditions a citizen of the United States may purchase not exceeding 160 acres of certain lands of the United States, which are valuable chiefly for timber and are unfit for cultivation. One of the conditions of this purchase is that the applicant shall file with the register of the proper district a written statement under oath that he does not apply to purchase the land he seeks to buy on speculation and that he has not made any agreement with any person or persons by which the title that he might acquire from the Government would inure to the benefit of any person except himself. The act provides that if any person who makes oath to this statement shall swear falsely in the premises he shall forfeit the money he may have paid for the lands and all right and title to them and that any grant or conveyance he may have made, except in the hands of bona fide purchasers, shall be void. Forty-four of the defendants in this suit took this oath and entered, and paid the government price for forty-four tracts of land at various times times between August 21, 1899, and September 6, 1900. Forty-one of them conveyed the timber on their land to the Martin-Alexander company immediately after they made their respective entries and obtained their respective final receipts. On January 14, 1901, the defendant, the Detroit Lumber Company, bought this timber of the Martin company, and the consideration for that purchase was paid by it and the timber was conveyed to it before May 3, 1901. Patents were issued for all the lands before May 9, 1901. In the month of April,

1901, the Detroit company purchased the lands of the three patentees who had declined to execute timber contracts, and the legal title to that land and to the timber upon it was thus vested in that company. Between April 1, 1901, and September 10, 1901, the company purchased the legal title to the lands entered by twenty-four of the patentees who had made timber contracts and this title was duly conveyed to it. In the last days of September or the first days of October, 1901, the company for the first time learned that the United States was suggesting that these lands had been illegally entered and on April 5, 1902, the Government commenced this suit. The lands without the timber upon them are worthless, and the real controversy here is between the United States and the Detroit company.

The suit presents two issues: (1) Whether or not the patentees applied to purchase the lands on speculation or had made agreements before they filed their applications by which the titles they hoped to acquire would inure to the benefit of any person except themselves; and if so, (2) whether or not the Detroit company had knowledge or notice of that fact so that the complainant is entitled in equity to an avoidance of the title to the timber which that company has acquired.

The case of the Government did not appeal with compelling force to the conscience of the chancellor below. He found the first issue in favor of the defendants and dismissed the bill. This finding is vigorously assailed

If, however, the Detroit company was a bona fide purchaser of the
452 timber without notice of the alleged fraud and perjury of the patentees, it is not material to the issue between the Government and that company whether or not the patentees were guilty of these crimes. The act of June 3, 1878, expressly exempts from avoidance conveyances in the hands of bona fide purchasers. The evidence which conditions the issue of the fraud of the patentees is voluminous and contradictory and for the purpose of the consideration of the other issue which, if determined in favor of the Detroit company, must practically dispose of this case, it is conceded that each of the patentees applied to enter the tract which he or she secured on speculation, or that he or she, before making the application, had made a contract whereby the title to the lands would inure to the benefit of the Martin-Alexander Lumber Company. The question then becomes, had the Detroit Company any notice or knowledge, actual or constructive, of this conceded fact before it completed its purchase of the timber? It bought the timber contracts, together with all the property of the Martin company, on January 14, 1901. It made its first payment of $27,456.29 in cash on that day, its second payment of $25,000 a day or two later, and its final payment of $25,000 of stock on April 22, 1901. The timber contracts, the deeds for the lands bought, and the posession and control of the property of the Martin company were delivered to the Detroit company on January 14, 1901, and the formal bill of sale and deed upon May 2, 1901. It is not material at what date prior to the 2d of May, 1901, this sale is deemed effective, because the notice to the Detroit company or the lack of it remained the same during all this time. On January 14, 1901, when the sale was initiated, receiver's final receipts had been issued to all of the forty-four patentees and patents had been delivered to thirteen of them. On May 2, 1901, when the sale was completed, patents had been issued to forty

of them. The Detroit company was dealing with the Martin company at arm's length. It was the vendee, the Martin company was the vendor. The latter exhibited its contracts and deeds, and declared that the titles under them were perfect and that every grantor under whom it held had a patent or a final receipt for his land. Clark, the president of the Detroit company, who conducted the negotiation and made the purchase, examined and checked the contracts and deeds, believed the statements of the officers of the vendor and completed the purchase. The evidence is clear, positive, and without dispute that neither the Detroit company nor its officers ever had any knowledge or suspicion that any of the lands here in controversy were irregularly or fraudulently entered until the latter part of September, 1901, more than four months after the purchase had been completed and after all the patents had issued.

But counsel for the Government maintain that although the purchaser had no actual notice it had legal or constructive notice of the fraud in the entries of the lands, (1) because there was no actual sale of property by the Martin company to the Detroit company, but a mere merger of the two corporations into one; (2) because notice sufficient to put a person of ordinary prudence on inquiry is notice of all that a reasonably diligent investigation would disclose and the Detroit company had such notice; (3) because the timber contracts were not conveyances, but mere executory agreements to convey, and (4) because a legal estate is indispensable to the defense of a bona fide purchase and the final receipts, which had not ripened into patents when the Detroit company made its purchase, evidenced equitable titles only, and constituted notice that their issue was induced by fraud and perjury. Let us consider these arguments in their order.

453 The claimant alleged in its bill, the defendant admitted in its answer, and the evidence demonstrated that the Martin company sold, assigned, and transferred the timber contracts to the Detroit company on January 14, 1901. No merger of the two corporations was pleaded, none was proved. The transfer of the stock of Martin in his company to Clark and to the Detroit company, and the substitution of Clark for Martin as president of the former company when the sale was made, was nothing but a means to an end, a device to effect the sale and to transfer the immediate possession and control of the property to the vendee. That transfer was not intended to merge and it did not merge the two corporations into one, nor did it charge Clark or the Detroit company with notice of any of the acts or transactions of the Martin company of which he was not otherwise aware. In his relations to the Martin company and to its grantors, the United States and the entrymen and entrywomen, Clark was still the agent and representative of the purchaser and not of the seller.

There is no evidence in this record that notice of facts sufficient to put a person of ordinary prudence on inquiry for fraud and perjury in the applications for the purchase of these lands was ever given to the Detroit company or to any of its officers before it consummated its purchase, nor is there any evidence that a reasonably diligent inquiry would have discovered fraud or perjury if it had been instituted. Clark saw the timber contracts and received the assurance of the vendor that all the grantors

in them had patents or final receipts for their lands and that the title under them was perfect. These were all the facts relative to this matter of which Clark received notice. The contracts were such as any entryman might lawfully make under the opinion of the Supreme Court in U. S. v. Budd, 144 U. S., 154, 163. They were not of the same date, but were executed at various times between July, 1899, and September 6, 1900. There was nothing here to incite a reasonably prudent man to inquire for fraud in the entries of the land, nor would a reasonably diligent inquiry have discovered any fraud. If the question had been put to the entrymen, to the entrywomen, to Martin, and to Alexander, they would have answered with a single voice that the statements in the applications were true, for they have so testified here. If inquiry had been made of the officers of the land department they would have replied that there was no falsehood in the statements and that the entries were lawfully and regularly made, for they issued the final receipts and the patents upon them in that belief.

Nor was there any duty upon this purchaser in the absence of other facts suggesting inquiry when the seller presented conveyances to it apparently valid and gave its assurance that they vested perfect titles in it to make further investigation. The presumption always is in the absence of countervailing evidence that men tell the truth and that bills of sale and deeds prima facie valid are actually so, and purchasers may lawfully act upon this presumption. Jones v. Simpson, 116 U. S., 609, 615. "Where a person has not actual notice he ought not to be treated as if he had notice unless the circumstances are such as enable the court to say, not only that he might have acquired, but also that he ought to have acquired the notice with which it is sought to affect him—that he would have acquired it but for his gross negligence in the conduct of the business in question." Ware v. Lord Egmont, 4 D. M. & G., 460,
454 473; Sugden on Vendors, 622; Wilson v. Wall, 73 U. S., 83, 91. "What makes inquiry a duty is such a visible state of things as is inconsistent with a perfect right in him who proposes to sell." Meehan v. Williams, 48 Pa. St., 238, 241; Townsend v. Little, 109 U. S., 504, 511; Colorado Coal Co. v. U. S., 123 U. S., 307, 316, 319; Crawford v. Neal, 144 U. S., 585, 595. The notice to the Detroit company meets none of these tests of constructive notice where actual notice is absent.

The next contention is that the timber contracts conveyed nothing but an equitable claim to the title of the grantors in them to the timber, because they were executory contracts to sell, and that therefore the Detroit company could not be a bona fide purchaser because it acquired no legal real estate under them. But the contracts were not executory agreements to sell, but absolute conveyances in presenti of the timber growing upon the land. They therefore vested in the Martin company and its grantors an interest in the real estate. White v. Foster, 102 Mass., 375; Russell v. Myers, 32 Mich., 522.

Finally counsel for the Government say, and this seems to be the argument upon which they most implicitly rely, that acquisition of the legal title was indispensable to the defense of a bona fida purchase; that the legal title to all but 13 of the 44 tracts was in the United States when the Detroit company purchased; that the title to the timber on these 31

tracts which the Detroit company bought was a mere equitable title evidenced by the final receipts; that these receipts constituted notice to the Detroit company that they had been secured by the fraud and perjury of the entrymen and entrywomen, and that the company could not divest itself of this notice by the subsequent issue of the patents and the acquisition of the legal title which inured to it thereunder. There are many reasons why this argument is not persuasive. In the first place, conceding for the present, without admitting or deciding this to be the law, that a legal estate in the vendee is an essential condition of the defense of a bona fide purchase, such an estate vested in the Detroit company before it received any notice of the alleged fraud. In the second place, the patents when issued related back to the dates of the applications upon which they were founded, and vested the legal estate in the timber in the Detroit company as of the date of its purchase from the Martin company and before it had notice of the fraud. And in the third place, the Detroit company was an innocent purchaser for value, in good faith, of the equitable title to the timber, evidenced by the final receipts, and the legal title vested in it by the issuance of the patents before the Government assailed either.

Counsel for the Government cite in support of their position that one who innocently purchases the equitable title evidenced by receiver's final receipts and subsequently acquires the legal estate evidenced by patents issued upon them, is charged with notice of fraud and perjury in the inception of his title from the Government and can not be a bona fide purchaser. U. S. v. Steenerson, 50 Fed., 504, 1 C. C. A., 552; American Mortgage Co. v. Hopper, 56 Fed., 67, 64 Fed., 553, 559, and 12 C. C. A., 293, 299; Diller v. Hawley, 81 Fed., 651, 655, 26 C. C. A., 514, 518; Hawley v. Diller, 178 U. S., 476; U. S. v. Bailey, 17 Land Dec., 468; Orchard v. Alexander, 157 U. S., 372; Parsons v. Venzke, 164 U. S., 89, 91; Guaranty Savings Bank v. Bladow, 176 U. S., 448, 453, and California Redwood Co. v. Little, 79 Fed., 854, 87 Fed., 1004, 31 C. C. A., 591. But these
455 authorities fail to sustain the proposition. They are cases in which the final receipts which evidenced equitable titles were avoided by the officers of the Land Department before the legal estate had been vested in the innocent purchasers. In these cases the courts held that the receiver's final receipt is prima facie evidence of the right of the entrymen to a patent; that the power is vested in the Land Department to set this aside and to cancel the entry it evidences for fraud or error after proper notice to the parties in interest, and in this way to take away from the innocent purchaser his prima facie evidence of title; that this power is not arbitrary or unlimited, but its exercise is always subject to judicial inquiry; that it is limited in duration to the time anterior to the issue of the patent, and that the avoidance of the receipt and the cancellation of the entry do not strike down the right of the purchaser to enforce the equitable title which he has purchased in the courts of the land, but that its effect is to compel him to sustain that title by evidence de hors the receipt. But the case in hand is not ruled by these conclusions. The Land Department did not avoid, it confirmed, the voidable title which the Detroit company purchased, by adding to it the legal title. The receiver's final receipts were not notice of fraud and perjury in their procurement. They were notice of honesty and legality in the proceedings that induced their issue. They

were prima facie evidence that those who received them had the right to patents to the lands, and they raised the legal presumption that entrymen and officers alike had complied with the law. They were notice to the Detroit company of the power of the Land Department to avoid them for fraud or error before the patents were issued, and of no other defect or danger, and the authorities cited for complainant express no different opinion. The Detroit company took its equitable title to the timber subject to this notice, and subject to the possible exercise by the Land Department of this power. That Department exercised the power, as the legal presumption was that it would exercise it, by affirming the validity of the voidable titles and by issuing the patents upon them. Here the effect of the notice from the purchase of the equitable titles ceased. The only reason that purchase gave notice of a voidable title was the fact that it did not acquire the legal title. The moment the legal estate inured to the benefit of the Detroit company by the issue of the patents, without notice of any fraud or irregularity in their procurement, its defense of a bona fide purchase was complete. It contained every essential element of a complete defense except the legal title before the patents were delivered. It was the lack of the legal title, and that alone, that made its defense vulnerable in the Land Office. When the patents had issued the power of the Land Department had ceased, and the Detroit company's position was conditioned by every attribute of that of a bona fide purchaser. Conceding that the indispensable elements of such a defense are absence of notice of the fraud or defect, good faith, payment of value, and the legal estate, it is not material at what time or in what order the purchaser acquires them. It is only necessary that they all concur in him at the same time. It is indispensable to this defense that the consideration should be paid before notice of the defect. But it is not essential that it should be paid before or at the time the title is conveyed. It is sufficient if the payment is completed at any time before notice of the defect is received. It is not more essential that the legal title should be secured before or at the time when the consideration
456 is paid. It is enough if it is acquired before notice of the alleged fraud or perjury is fastened upon the purchaser.

The legal title to the timber upon 13 of the tracts in dispute vested in the Detroit company on January 14, 1901, when it purchased of the Martin company. Its defense to the attack upon the title to the timber upon these tracts did not, however, become complete until April 22, 1901, when it finished its payment of the purchase price of the property. Its title then became unassailable at the suit of the Government for fraud or perjury which induced the issue of the patents. (U. S. v. Winona & St. Peter R. Co., 15 C. C. A., 96, 109, 67 Fed., 948, 961; U. S. v. Burlington & M. R. Co., 98 U. S., 334, 342; U. S. v. California & Oregon Land Co., 148 U. S., 31, 41.)

On May 9, 1901, four months before it received any intimation of any defect in its title, and eleven months before this suit was instituted, the patents to the other 31 tracts had issued, and the legal estate in the timber upon them had been vested in the Detroit company. The purchase price had been paid in full. The legal title had been acquired. No notice of any fraud or perjury in the inception of, or of any defect in, the title which it had bought, and which had passed from the complainant to

it when the patents were issued (Sandels & Hill's Digest, § 699) had been received. Why was not its defense that it was a bona fide purchaser impregnable? No satisfactory answer to this question has occurred to us, and our conclusion is that one who purchases in good faith and pays value for the equitable title to land of the Government evidenced by the receiver's final receipt, and who subsequently, and before receiving notice of any fraud or defect in his title, acquires the legal estate through the issue of the patent, is a bona fide purchaser and his title is unassailable at the suit of the United States to avoid the patent for fraud or perjury of the immediate or remote grantors of the purchaser. (Colorado Coal Co. v. U. S., 123 U. S., 307, 309, 322; U. S. v. Clark, 125 Fed., 774, 776.)

Finally this is a suit in equity. The equitable claims of the United States appeal to the conscience of a chancellor with the same but with no greater or less force than would those of an individual in like circumstances. Bona fide purchasers are the especial favorites of courts of equity. In Boone v. Chiles, 10 Pet., 177, 209, Mr. Justice Baldwin, in delivering the opinion of the Supreme Court, said: "A court of equity can act only on the conscience of a party. If he has done nothing that taints it, no demand can attach upon it so as to give any jurisdiction. (Sugd. Vend., 722.) Strong as a plaintiffs equity may be, it can in no case be stronger than that of a purchaser who has put himself in peril by purchasing a title, and paying a valuable consideration, without notice of any defect in it or adverse claim to it; and when, in addition, he shows a legal title from one seized and possessed of the property purchased, he has a right to demand protection and relief (9 Ves., 30–34) which a court of equity imparts liberally." Conceding now, for the purpose of the remainder of this discussion, that the Detroit company purchased and paid for the equitable estate evidenced by the final receipts, in the first instance, and that it did not acquire the legal title until the patent issued, what has that company done to taint the conscience of anyone, or to entitle the Government to any relief against it in this suit? The record discloses nothing. The general rule in chancery is that where equities are
457 equal the defendant prevails, that it is only when the case of the complainant appeals to the conscience of the court with the greater force that it will interfere to grant relief. St. Johnsbury v. Morrill, 55 Vt 165, 169; 2 Pom. Eq. Jur. § 739; Colyer v. Finch, 5 House of Lords Cas., 694, 706; Medlicott v. O'Donel, 1 Ball & Beatty, 156, 171. Here the equity of the Government is far less persuasive than that of the Detroit company. The former has received and still retains $17,000, the purchase price which it fixed for these lands, and it asks this court that the timber upon them, which constitutes their only real value, be taken from the defendant, which has innocently bought and paid for it, and restored to the complainant. It issued its final receipts, which were prima facie evidence of a right in the grantees therein named to the title of these lands, and the Detroit company purchased and paid for the timber upon them in reliance upon these certificates, without notice of any fraud in their procurement. The company seeks no relief, but prays only that it be permitted to retain that which it bought and paid for in good faith, while the complainant seeks to keep the purchase price of the property which it sold and to recover back the property itself. The equity of the defendant is the stronger.

Not only this, but the Detroit company has added to its equitable title the legal estate in the timber. Where equities are equal the law must prevail. A court of equity will not interfere at the suit of the holder of a prior equitable title or claim to deprive the innocent purchaser for value of a junior equitable estate of equal strength of a legal title which he has subsequently bought or obtained after notice of the defect. It will not disarm a bona fide purchaser or take from him the shield of any legal advantage. 1 Story Eq. Jur. (13th ed.), § 64c; 2 Pom. Eq. Jur., § 766; Bosset v. Nosworthy, 2 Leading Cases in Equity (4th, ed.), 71; Bayley v. Greenleaf, 7 Wheat., 46, 57; Lea v. Polk County Copper Co., 62 U. S., 493, 498; Dueber Watch-Case Mfg. Co. v. Dougherty, 62 Oh. St., 589, 596; Zollman v. Moore, 21 Gratt., 313, 321. In Dueber Watch-Case Mfg. Co. v. Dougherty, one Coburn held stock in the company for which he had paid nothing and which he had agreed to transfer back to the corporation. While this stock stood in his name he induced Dougherty and another to endorse his note by making an agreement with them that he would subsequently transfer the stock to them as collateral security for his liability to them upon their endorsement. At the time when the endorsement was made the endorsers had no notice of the right of the company to the stock, but they received notice of that right before Coburn assigned the stock to them. After this notice Coburn made the assignment. The court sustained the claim of the endorsers and said: "And here it will be observed that the claim of the company is not that of an innocent purchaser for value. Its claim is that of a mere equity for a reconveyance, prior in time to the equity of the plaintiffs. The contest is simply between equities. In such cases the settled doctrine is stated by Pomeroy to be 'that if a second or other subsequent holder, who would otherwise be postponed to the earlier ones, obtains the legal estate, or acquires the best right to call for the legal estate, he thereby secures an advantage which entitles him to priority. It is absolutely essential that he should have acquired his equitable interest without any notice of the prior claims.' Pomeroy Eq., sec. 727, also sec. 729; Adams Eq., 161, 162. * * *
458 The plaintiffs seem to be clearly within the rule here stated, They had no knowledge of the company's claim when they acquired their equity, and had a right to protect it by taking an assignment of the stock for that purpose, which they did on January 7, 1892, though at that time they had knowledge of the company's claim. This gives to them an unquestioned priority over the company and the right to a sale of the stock for the satisfaction of their claim." The case at bar falls far within the rule which these cases illustrate, and differs from them only in the fact that the Detroit company not only received no notice of the alleged fraud before it purchased its equitable estate, but it received no notice of it until it had also acquired the legal title to the timber.

For the reasons which have now been stated, perhaps at too great length, the United States is not entitled to recover from the Detroit company the timber which it purchased, to enjoin it from removing that timber from the lands, or to avoid the conveyances which vested the title to the timber in the company.

For the same reasons the Government is not entitled to a decree avoiding the patents or the subsequent conveyances of the 27 tracts of land which the Detroit company purchased and obtained deeds of from the entrymen and entrywomen before it had notice of any defects in the titles and before this suit was commenced.

There remain 17 tracts of land the title to which still stands in the original applicants and patentees. The Detroit company owns the timber upon these lands and has the right to remove it according to the terms of the timber contracts. The land without the timber is of little, perhaps of no, value. The evidence in this record has convinced, not that these applicants made any agreements by which the title which they might acquire should inure to the benefit of any person except themselves, but that each one of them applied to enter the lands he or she obtained on speculation for the use and benefit of the Martin-Alexander Lumber Company and not in good faith to appropriate it to his or her own exclusive benefit. The salient facts which were proved in this case and which have forced our minds to this conclusion appear in the statement which precedes this opinion, and no good purpose would be subserved by restating them here.

The decree below is accordingly reversed and the case is remanded to the circuit court with instructions to enter a decree to the effect that the patents issued to the defendants, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland, be avoided, with costs in favor of the United States against them and the Martin-Alexander Lumber Company, and that the complainant is entitled to no relief against the Detroit Timber and Lumber Company and the bill against it and the other defendants not named above be dismissed with costs. It is so ordered.

Filed July 28, 1904.

459 *Decree.*

And on the twenty-eighth day of May, A. D. 1904, in the record of the proceedings of said circuit court of appeals is a decree in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit, May term, 1904.

THURSDAY, *July 28, 1904.*

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER AND LUMBER COMPANY, Martin Alexander Lumber Company, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Emma E. Lintz, Bill D. Copeland, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Gus G. Copeland, George T. Colston, Henry Jones, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, Ezekiel Y. Fuller, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, Willian F. Waits, Charles W. Davis, Bill Dorsey, Mary E. Davis, Jim S. Pennington, Jennie V. Pennington, and Carrie M. Hicks.

No. 2009. Appeal from the circuit court of the United States for the western district of Arkansas.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the western district of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed without costs to either of the parties in this court.

460 It is further ordered that this cause be, and the same is hereby, remanded to the said circuit court with directions to enter a decree to the effect that the patents issued to the defendants, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland be avoided, with costs in favor of the United States against them and the Martin-Alexander Lumber Company, and that the complainant is entitled to no relief against the Detroit Timber and Lumber Company, and the bill against it and the other defendants not named above be dismissed with costs.

July 28, 1904.

Petition for appeal.

And on the fifth day of September, A. D. 1904, a petition for appeal was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

In the United States circuit court of appeals for the eighth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER & LUMBER COMPANY ET AL., appellees. } Petition for appeal.

The above-named appellant, conceiving itself aggrieved by the order and decree made and entered of record in the above entitled cause on the 28th of July, 1904, wherein and whereby it was ordered, adjudged, and decreed that complainant was entitled to no relief against the Detroit Timber & Lumber Company, and that appellant's bill against it and Robbie J. Hughes, Emma F. Lintz, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller,
461 Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary F. Davis, Emma J. Moran, Jim S. Pennington, Jennie V. Pennington, Charles M. Mackay, Carrie M. Hicks, D. D. Brunson, and Martin-Alexander Lumber Company be dismissed, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herein, and it prays that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

JAMES K. BARNES,
U. S. Attorney,

F. A. YOUMANS,
Ass't U. S. Attorney,
Solicitors for Appellant.

(Endorsed:) No. 2009. United States of America vs. Detroit Timber and Lumber Co. et al. Petition for appeal. Filed Sept. 5, 1904. John D. Jordan, clerk.

Assignment of errors.

And on the fifth day of September, A. D. 1904, an assignment of errors was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

In the United States circuit court of appeals for the eighth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER & LUMBER COMPANY ET AL., appellees.
} Assignment of errors.

Comes the appellant, the United States of America, and files the following assignment of errors upon which it will rely in its appeal
462 from the decree made by this honorable court in the above-entitled cause on the 28th day of July, 1904.

1. The court erred in refusing to hold that prior to the entries made at the United States land office at Camden, Arkansas, by defendants, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Emma E. Lintz, Bill D. Copeland, George T. Colston, Henry Jones, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Gus G. Copeland, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Sherman L. Garrison, Barbary A. Garrison, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary F. Davis, Emma J. Moran, Jim S. Pennington, Jennie V. Pennington, Charles M. Mackey, and Carrie M. Hicks, an agreement was entered into by and between each and every of said entrymen and entrywomen, and their codefendant, the Martin-Alexander Lumber Company, that the entry made by each of them, respectively, should be made for the benefit of the Martin-Alexander Lumber Company in order that it might obtain the timber growing on the lands covered by said entries.

2. The court erred in refusing to hold that the appellee, the Detroit Timber & Lumber Company, prior to its purchase of timber deeds and contracts from its codefendant, Martin-Alexander Lumber Company, had knowledge of the fact that the entries covered by said timber deeds or contracts were made at the United States Land Office under an agreement between said Martin-Alexander Lumber Company and each and every of the entrymen and entrywomen, that the entry made by each of them, respectively, should be made for the benefit of said Martin-Alexander Lumber Company in order that it might obtain the timber standing and growing on said entry.

3. The court erred in refusing to hold that the Detroit Timber & Lumber Company, prior to its purchase of timber deeds or con-
463 tracts from its codefendant, Martin-Alexander Lumber Company, had knowledge of the fact that the entries of lands covered by said timber deeds or contracts were made at the United States Land Office at Camden, Akansas, by each and every of the entrymen and entrywomen on speculation.

4. The court erred in refusing to hold that the Detroit Timber & Lumber Company was not an innocent purchaser of the lands and the contracts for timber from lands described in complainants' bill.

5. The court erred in holding that said Detroit Timber & Lumber Company is entitled to the timber from 17 tracts entered by the following defendants: John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibal G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland.

6. The court erred in holding that appellant is entitled to no relief against the Detroit Timber & Lumber Company.

7. Ths court erred in directing that appellant's bill be dismissed as against the Detroit Timber & Lumber Company, Martin-Alexander Lumber Company, Robbie J. Hughes, Emma F. Lintz, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary F. Davis, Emma J. Moran, Jim S. Pennington, Jennie V. Pennington, Charles M. Mackey, Carrie M. Hicks, and D. D. Brunson.

JAMES K. BARNES,
U. S. Attorney,
F. A. YOUMANS,
Ass't U. S. Attorney,
Solicitors for Appellant.

(Endorsed:) No. 2009. United States of America vs. Detroit Timber and Lumber Co. et al. Assignment of errors. Filed Sep. 5, 1904. John D. Jordan, clerk.

464 *Petition for continuance of injunction in force and acceptance of notice.*

And on the fifth day of September, A. D. 1904, a petition for continuance of injunction in force and acceptance of notice was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

In the United States circuit court of appeals for the eighth circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* DETROIT TIMBER AND LUMBER COMPANY et al., appellees.	Petition for continuance of injunction in force.

Comes James K. Barnes, United States attorney for the western district of Arkansas, and F. A. Youmans, assistant United States attorney for said district, and for and on behalf of the said United States, represent to the court:

That on the perfecting of the appeal of the said United States in the above-entitled cause to this court, application was made to this court by appellant for an order continuing in force the injunction granted by the circuit court of the United States for the western district of Arkansas,

Texarkana Division, at the institution of this suit, and continued by said court until application could be made to this court, which injunction restrained the said Detroit Timber and Lumber Company, its agents, officers and employees, from cutting or removing any timber from the lands described in the complaint of appellant, which said application to this court was granted and order made.

That on the 28th day of July, 1904, a decree was rendered in said cause in this court, reversing the decree of the lower court, but holding that said Detroit Timber and Lumber Company was an innocent purchaser of all the lands described in said complaint for which it
465 had obtained deeds from the entrymen, and also an innocent purchaser of all the timber on all other lands described in said complaint, and directing that complainant's bill be dismissed as against the following-named appellees: Detroit Timber and Lumber Company, Robbie J. Hughes, Emma F. Lintz, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Bedford F. Patterson, Emmett S. Kecbaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willie Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary F. Davis, Emma J. Moran, Jim S. Pennington, Jennie V. Pennington, Charles M. Mackey, Carrie M. Hicks and D. D. Brunson and Martin-Alexander Lumber Company.

That the said appellant desires to appeal from the said decree of this court to the Supreme Court of the United States and has filed its assignment of errors and petition for appeal, and prays that this court make an order continuing said injunction in force until such time as said appellant can perfect its appeal to said Supreme Court and apply to said court for an order to continue said injunction in force pending the appeal.

JAMES K. BARNES, *United States Attorney,*
F. A. YOUMANS, *Asst. U. S. Attorney,*
Solicitors for Appellant.

In the United States circuit court of appeals for the eighth circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER & LUMBER COMPANY et al., appellees. } Notice.

To the above-named Detroit Timber & Lumber Company or its attorneys of record:

You are hereby notified that application will be made on behalf of appellant in the above entitled cause to the circuit court of appeals
466 for the eighth circuit at Denver in the State of Colorado, at 10 o'clock a. m., on the 8th day of September, 1904, or as soon thereafter as practicable, for an order continuing in force the injunction in said cause against said Detroit Timber & Lumber Company, its agents, officers, and attorneys, until such time as plaintiff in error can perfect its appeal to the Supreme Court of the United States and apply to said court for an order continuing said injunction in force pending the appeal.

JAMES K. BARNES, *U. S. Attorney,*
F. A. YOUMANS, *Asst. U. S. Attorney,*
Solicitors for Appellant.

Service of the foregoing notice is accepted this 1st day of September, 1904.

JAS. F. READ,
Solicitors for Detroit Timber & Lumber Company.

(Endorsed:) No. 2009. United States of America vs. Detroit Timber & Lumber Co. et al. Petition for continuance of injunction in force and acceptance of notice. Filed Sep. 5, 1904. John D. Jordan, clerk.

Order continuing injunction in force until third Monday of October, 1904.

And on the ninth day of September, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an order continuing injunction in force, etc., in said cause, in the words and figures following, to-wit:

United States circuit court of appeals, eighth circuit. September term, 1904.

FRIDAY, *September 9, 1904.*

UNITED STATES OF AMERICA, appellant, *vs.* DETROIT TIMBER AND LUMBER Company et al.	No. 2009. Appeal from the circuit court of the United States for the western district of Arkansas.

This cause came on this day to be heard upon the petition of
467 the appellant for an order continuing the injunction in force in *in* this cause.

On consideration whereof, it is now here ordered by this court, that the injunction heretofore issued by the circuit court of the United States for the western district of Arkansas in this cause be, and the same is hereby, continued in force until the third Monday of October, A. D. 1904.

September 9, 1904.

Order allowing appeal to Supreme Court of the United States.

And on the ninth day of September, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an order allowing appeal to Supreme Court of the United States in said cause, in the words and figures following, to-wit:

United States circuit court of appeals, eighth circuit. September term, 1904.

FRIDAY, *September 9, 1904.*

UNITED STATES OF AMERICA, APPELlant, *vs.* DETROIT TIMBER AND LUMBER COMpany et al.	No. 2009. Appeal from the circuit court of the United States for the western district of Arkansas.

Upon consideration of the petition for the allowance of an appeal, it is now here ordered by this court, that an appeal to the Supreme Court of

the United States be, and the same is hereby, allowed to the United States of America in this cause.

September 9, 1904.

468 *Citation.*

And on the twenty-third day of September, A. D. 1904, a citation was filed in the office of the clerk of said circuit court of appeals in said cause, the original of which, with proof of service thereon, is hereto attached and herewith returned.

469 The United States of America to the Detroit Timber and Lumber Company, Robbie J. Hughes, Emma F. Lintz, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary F. Davis, Emma J. Moran, Jim S. Pennington, Jennie V. Pennington, Charles M. Mackey, Carrie M. Hicks, D. D. Brunson, and Martin-Alexander Lumber Company, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said United States of America, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the honorable Walter H. Sanborn, presiding judge of the United States circuit court of appeals for the eighth circuit, this ninth day of September, in the year of our Lord one thousand nine hundred and four.

WALTER H. SANBORN,
Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

470 UNITED STATES OF AMERICA,
Western District of Arkansas, ss:

I hereby certify that I served a true copy of this citation upon James F. Read, in the city of Fort Smith, Arkansas, on the 14th day of September, 1904, and a true copy upon J. C. Pinnix, at Murfreesboro, Arkansas, on September 16th, 1904, they being the attorneys of record for the defendants in error, the Detroit Timber and Lumber Company, Robbie J. Hughes, Emma E. Lintz, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, Wm. F. Waits, Charles W. Davis, Mary F. Davis, Jim S. Pennington, Jennie V. Pennington,

Charles M. Mackie, Carrie M. Hicks, D. D. Brunson, and Martin-Alexander Lumber Company, and a true copy upon each of the defendants in error, Bill Dorsey, Seborn Z. Moran, and Emma J. Moran, on September 17th, 1904, all in the western district of Arkansas.

S. F. STAHL,
U. S. Marshal, Western District of Arkansas.

(Indorsed:) Supreme Court of the United States. October term, A. D. 1904. No. . The United States of America, appellant, vs. The Detroit Timber and Lumber Company et al. Citation. Filed Sep. 23, 1904. John D. Jordan, clerk.

471 *Clerk's certificate.*

United States circuit court of appeals, eighth circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing four hundred seventy-one pages contain a true copy of the portions of the transcript of the record printed pursuant to the designation of appellant and upon which record said cause was heard, and full, true, and complete copies of all proceedings and record entries, including the opinion of said circuit court of appeals, in the case of The United States of America, appellant, vs. Detroit Timber and Lumber Company et al., appellees, No. 2009, May term, 1904, as the same remain on file and of record in my office.

I do further certify that the original citation, with proof of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at office in the city of St. Louis, Missouri, in the eighth circuit, this twenty-fourth day of September, A. D. 1904.

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Indorsement on cover:) File No. 19489. U. S. circuit court appeals, 8th circuit. Term No. 389. The United States, appellant, vs. The Detroit Timber and Lumber Company et al. Filed October 12th, 1904. File No. 19489.

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472 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1904, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit, the second day of May, A. D. 1904, before the Honorable Walter H. Sanborn and the Honorable William C. Hook, circuit judges, and the Honorable Charles F. Amidon, district judge.

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, in a certain cause pending in the United States circuit court of appeals on appeal from the circuit court of the United States for the western district of Arkansas, wherein the United States of America was appellant and the Detroit Timber and Lumber Company, and the Martin-Alexander Lumber Company, and others, were appellees, a decree was entered in said United States circuit court of appeals on the twenty-eighth day of July, A. D. 1904, in favor of the United States of America and against the Martin-Alexander Lumber Company, and others, therein named, and the Martin-Alexander Lumber Company, and others, have prosecuted a cross appeal from the said decree to the Supreme Court of the United States.

The following proceedings, showing the perfection of such cross appeal, are herewith transmitted in the words and figures following, to wit:

473 DECREE.

On the twenty-eighth day of July, A. D. 1904, in the record of the proceedings of said circuit court of appeals is a decree in the case of The United States of America, appellant, vs. Detroit Timber and Lumber Company et al., in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit, May term, 1904.

THUSDAY, *July 28, 1904.*

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
DETROIT TIMBER AND LUMBER COMPANY, MARTIN Alexander Lumber Company, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Emma E. Lintz, Bill D. Copeland, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Gus G. Copeland, George T. Colston, Henry Jones, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, Ezekiel Y. Fuller, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Charles W. Davis, Bill Dorsey, Mary E. Davis, Jim S. Pennington, Jennie V. Pennington, and Carrie M. Hicks.

No. 2009. Appeal from the circuit court of the United States for the western district of Arkansas.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the western district of Arkansas, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and
474 decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed, without costs to either of the parties in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said circuit court with directions to enter a decree to the effect that the patents issued to the defendants, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland be avoided, with costs in favor of the United States against them and the Martin-Alexander Lumber Company, and that the complainant is entitled to no relief against the Detroit Timber and Lumber Company, and the bill against it and the other defendants not named above be dismissed with costs.

JULY 28, 1904.

Petition of Martin-Alexander Lumber Company and John H. Scott et al. for appeal.

And on the sixteenth day of November, A. D. 1904, the petition of Martin-Alexander Lumber Company and John H. Scott et al. for appeal was filed in said cause in the words and figures following, to wit:

United States circuit court of appeals, eighth judicial circuit.

UNITED STATES, APPELLANT
v.
DETROIT TIMBER & LUMBER COMPANY ET AL., appellees.

Come the appellants, the Martin-Alexander Lumber Company, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman
475 Garrison, Barbara Garrison, a*b*d Bill D. Copeland, and pray the court to grant an appeal from the decree rendered herein against them and in favor of the appellant on the 28th of July last past, and they herewith tender their assignment of errors.

J. C. PINNIX.
ROSE, HEMINGWAY & ROSE.

(Endorsed:) 2009. The United States of America, appellant, vs. Detroit Timber & Lumber Co. et al. Petition Martin-Alexander Lumber Co. and John H. Scott et al. for appeal. Filed Nov. 16, 1904. John D. Jordan, clerk.

Assignment of errors by Martin-Alexander Lumber Company.

And on the sixteenth day of November, A. D. 1904, an assignment of errors by the Martin-Alexander Lumber Company was filed in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth judicial circuit.

UNITED STATES, APPELLANT,
v.
DETROIT TIMBER & LUMBER CO. ET AL., APPELLEES.

Assignment of errors.

Comes the Martin-Alexander Lumber Company and assigns error to the decree of this court in this cause rendered on the 28th of July last past, in the following particulars:

1. That the court erred in holding that John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland, or any one of them, applied to enter the lands he or she obtained on speculation for the use and benefit of this appellee,
476 and not in good faith, to appropriate it to his or her own exclusive benefit.

2. That the court erred in holding that any of the said entrymen made his or her entry on speculation, for the use and benefit of this appellee, and not in good faith to appropriate it to his or her own exclusive benefit.

3. That the court erred in reversing the decree of the circuit court.

4. That the court erred in rendering a decree for the costs against this appellee.

5. That the court erred in not rendering a decree affirming the decree of the circuit court.

ROSE, HEMINGWAY & ROSE,
Solicitors.

(Endorsed:) 2009. The United States of America, appellant, vs. Detroit Timber & Lumber Co. et al. Assignment of errors by Martin-Alexander Lumber Co. Filed Nov. 16, 1904. John D. Jordan, clerk.

Assignment of errors by John H. Scott et al.

And on the sixteenth day of November, A. D. 1904, an assignment of errors by John H. Scott et al. was filed in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth judicial circuit.

UNITED STATES, APPELLANT,
v.
DETROIT TIMBER & LUMBER CO. ET AL., APPELLEES.

Assignment of errors.

Come the appellees, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph

O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland and assign error to the decree of this court in this cause rendered on the 28th day of July last past in the following particulars:

477 1. That the court erred in holding that they, or either of them, applied to enter the lands that he or she obtained on speculation, for the use or benefit of the Martin-Alexander Lumber Company, and not in good faith to appropriate it to his or her own exclusive use and benefit.

2. That the court erred in reversing the decree of the circuit court as against any one of these appellees.

3. That the court erred in rendering a decree for costs against these appellees, or either of them.

4. That the court erred in not affirming the decree of the circuit court in favor of each of these appellees.

J. C. PINNIX, *Solicitor.*

(Endorsed:) 2009. The United States of America, appellant, vs. Detroit Timber & Lumber Co. et al. Assignment of errors by John H. Scott et al. Filed Nov. 16, 1904. John D. Jordan, clerk.

Bond on appeal.

And on the thirteenth day of December, A. D. 1904, a bond on appeal was filed in said cause, in the words and figures following, to wit:

Know all men by these presents that we, A. V. Alexander and R. A. Lester, are hereby held and firmly bound unto the United States of America in the full and just sum of one thousand dollars, to be paid to the United States of America, or its assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 7th day of December, in the year of our Lord one thousand nine hundred and four.

Whereas, lately, at the May term, A. D. 1904, of the United States circuit court of appeals for the eighth circuit, in a suit *de*pending in said court between the United States of America, appellant, and the

478 Martin-Alexander Lumber Company and John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland, appellees, judgment was rendered against the above-named appellees, and the said above-named appellees have obtained an appeal *on* the said court to reverse the decree in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing it to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the date of said citation.

Now the condition of the above obligation is such that if the said Martin-Alexander Lumber Company, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha

Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland shall prosecute said appeal to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

A. V. ALEXANDER.
R. A. LESTER.

Approved by

WALTER H. SANBORN,
Circuit Judge.

Dec. 14, 1904.

STATE OF ARKANSAS,
County of Sebastian:

A. V. Alexander and R. A. Lester, sureties on the within bond, being duly sworn, each for himself deposes and says that he is worth, after paying his just debts, the sum of one thousand dollars, exclusive
479 of property exempt from execution, by the laws of the State in which he resides.

A. V. ALEXANDER.
R. A. LESTER.

Subscribed and sworn to before me by the sureties above named, A. V. Alexander and R. A. Lester, this 9th day of December, 1904.

[SEAL.] W. F. BLOCKER,
Notary Public.

My commission expires Aug. 13, 1907.

(Endorsed): No. 2009. United States of America, appellant, vs. Detroit Timber and Lumber Company et al. Bond on appeal by Martin-Alexander Lumber Company et al. Filed Dec. 13, 1904, John D. Jordan, clerk.

Order allowing appeal to Martin-Alexander Lumber Company et al.

And on the fourteenth day of December, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an order allowing appeal to Martin-Alexander Lumber Company et al., in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit, December term, 1904.

WEDNESDAY, *December 14, 1904.*

UNITED STATES OF AMERICA, Appellant, *vs.* DETROIT TIMBER AND LUMBER Company et al.	No. 2009. Appeal from the circuit court of the United States for the western district of Arkansas.

Upon consideration of the petition of the Martin-Alexander Lumber Company et al., for the allowance of an appeal, it is now here ordered

by this court that an appeal to the Supreme Court of the United States be, and the same is hereby, allowed to the Martin-Alexander Lumber Company, John H. Scott, Thomas J. Clements, Jim P. Copeland,
480 John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland.
December 14, 1904.

Citation.

And on the twentieth day of December, A. D. 1904, a citation was filed in said cause, the original of which, with the acceptance of service endorsed thereon, is hereto attached and herewith returned.

481 UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein the Martin-Alexander Lumber Company, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland, are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said above-named appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the honorable Walter H. Sanborn, presiding judge of the United States circuit court of appeals for the eighth circuit, this 14th day of December in the year of our Lord one thousand nine hundred and four.

WALTER H. SANBORN,
Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

482 Service of within citation is hereby accepted this 17th day of December, 1904.

UNITED STATES OF AMERICA,
By JAMES K. BARNES,
U. S. Attorney for the Western District of Arkansas.

483 (Indorsed:) Supreme Court of the United States. No. . October term, 1904. Martin-Alexander Lumber Company et al., appellants, *vs.* The United States of America. Citation on appeal. Filed Dec. 20, 1904. John D. Jordan, clerk.

484 *Clerk's certificate.*

United States circuit court of appeals, eighth circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing thirteen pages contain full, true, and complete copies of the decree in the case of United States of America, appellant, *vs.* Detroit Timber and Lumber Company et al., No. 2009; the petition of Martin-Alexander Lumber Company et al., for appeal; assignment of errors by Martin-Alexander Lumber Company; assignment of errors by John H. Scott et al.; bond on appeal by Martin-Alexander Lumber Company et al.; and order allowing appeal to Martin-Alexander Lumber Company et al., on the cross-appeal of the Martin-Alexander Lumber Company et al., in the above-entitled cause, as full, true, and complete as the originals of same now remain on file and of record in my office.

I do further certify that the original citation on said cross-appeal, with the acceptance of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said circuit court of appeals at office in the city of St. Louis, Missouri, in the eighth circuit, this twenty-eighth day of December, A. D. 1904.

[SEAL.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Indorsement on cover:) File No. 19489. U. S. circuit court appeals, 8th circuit. Term No. 389. The United States, appellant, *vs.* The Detroit Timber and Lumber Company et al. Filed October 12, 1904. File No. 19604. Term No. 504. Martin-Alexander Lumber Company et al., appellants, *vs.* The United States. Filed January 13th, 1905. File Nos. 19489 & 19604.

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In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES OF AMERICA, appellant, *v.* THE DETROIT TIMBER AND LUMBER Company, et al. } No. 389.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MOTION TO CONTINUE INJUNCTION.

The Solicitor-General, on behalf of the United States of America, respectfully moves the court to continue the injunction now in force against the appellees pending the hearing and final determination of said case in this court, said injunction having been granted by the United States circuit court for the western district of Arkansas and upon appeal to the United States circuit court of appeals for the eighth circuit continued in force pending the appeal in said circuit court of appeals, and again continued by said circuit court of appeals upon appeal to this court until the third Monday of October (17th), 1904. The ground upon which this

motion is based is that irreparable injury and damage may result to the appellant if said injunction is not kept in force until the final determination of said appeal in this court.

STATEMENT OF CASE.

The United States of America filed its bill in the circuit court for the western district of Arkansas on April 7, 1902, naming as defendants the Martin-Alexander Lumber Company, the Detroit Timber and Lumber Company, John H. Scott, and others, as defendants, to vacate, on the ground of fraud, patents to certain lands entered under the act of June 3, 1878, commonly known as the Stone and Timber Act, which lands were conveyed by the entrymen to the Martin-Alexander Lumber Company (afterwards the Detroit Timber and Lumber Company).

The bill also prayed that damages in the sum of $60,000, representing the amount of timber taken from said lands by the entrymen and their grantees, be awarded the complainant, and that the Detroit Timber and Lumber Company be enjoined from taking timber from the lands in controversy pending the suit. Such an injunction was granted.

Upon final hearing the circuit court dismissed the bill of the complainant, but the injunction was continued by said court pending an appeal to the United States circuit court of appeals for the eighth circuit. The appeal to the last-named court was perfected and the injunction continued in force by said court until a final hearing of such appeal was therein had.

Said circuit court of appeals affirmed in part and reversed in part the decision of the circuit court, and from that portion of its decision affirming the circuit court the United States duly appealed to this court, and pending such appeal the circuit court of appeals, on the same day upon which the appeal was allowed, continued said injunction until the third Monday of October, 1904.

This court is now asked to continue such injunction pending its decision and the final determination of the case.

Notice of this motion has been given to defendants' counsel.

HENRY M. HOYT,
Solicitor-General.

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FILE COPY.

FILED
DEC 5 1905
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, APPELLANT,

v.

THE DETROIT TIMBER AND LUMBER COMPANY ET AL., appellees.

No. 106.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

AND

THE MARTIN-ALEXANDER LUMBER COMPANY, JOHN H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland, appellants,

v.

THE UNITED STATES.

No. 165, Cross Appeal.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, APPELLANT,
v.
THE DETROIT TIMBER AND LUMBER COMPANY, et al., appellees. } No. 106.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

AND

THE MARTIN-ALEXANDER LUMBER COMPANY, JOHN H. SCOTT, THOMAS J. CLEMENTS, JIM P. COPELAND, JOHN H. WILSON, ROBERTSON C. GREGORY, MARTHA GREGORY, JOSEPH O. MEANS, ARCHIBALD G. WINSLOW, CAROLINE H. MEANS, EMMA WINSLOW, JAMES F. PATTERSON, GUS C. COPELAND, GEORGE T. COLSTON, HENRY JONES, SHERMAN GARRISON, BARBARA GARRISON, AND BILL D. COPELAND, appellants,
v.
THE UNITED STATES. } No. 165, Cross appeal.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Under the act of June 3, 1878, and the act of August 4, 1892, amendatory thereof, any citizen of the United States, or any person who has declared his

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intention to become such, may purchase from the United States any quantity not to exceed 160 acres of land chiefly valuable for timber but unfit for cultivation, in the public land States, at the minimum price of $2.50 per acre. Any person desiring to avail himself of the provisions of these acts must file with the register of the proper land district an affidavit which, among other things, must declare that the applicant "does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself; * * *" The acts further provide that "if any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said lands, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void."

Under these acts forty-four persons, who are made defendants to the bill, made entries upon lands in the State of Arkansas, each of whom made and filed the affidavit required by said acts of Congress, and patents were issued upon these entries between February 23, 1900, and May 9, 1901.

The United States, on April 5, 1902, commenced proceedings in equity in the Circuit Court for the

Western District of Arkansas to vacate the patents which were issued to said forty-four entrymen. The material allegations of the original and amended bills are as follows:

That on or about the 1st day of August, 1899, Elmer B. Martin, Arch V. Alexander, and J. P. Copeland conspired together to defraud the United States of the lands which were taken up by the forty-four entrymen, as above described, and to obtain the timber growing thereon for the Martin-Alexander Lumber Company, which was at that time operating a sawmill at or near Pike City, Ark., of which company Martin was president, Alexander was secretary, and Copeland an employee; that to effect such purpose these three parties induced and procured forty-four persons, among whom were Copeland and twenty-four other employees of the Martin-Alexander Company and ten women who were the wives of employees, fraudulently to make applications at the land office at Camden, Ark., to enter each a separate portion of land under the said acts of Congress; that each of said forty-four persons made an entry at said land office, the date of each entry and the description of the land entered being set out in the bill; that before said entries were made Martin, Alexander, and Copeland entered into an agreement with each and every of the said entrymen that each and every entry should be made by them for the use and benefit of the Martin-Alexander Company, and that upon the issuance of the receiver's receipt to each he or she should at once execute to the said Martin-Alexander Company a conveyance of all the timber

standing and growing upon the land entered by him or her, respectively; that prior to making of said entries it was agreed by Martin, Alexander, and Copeland and the said entrymen that the Martin-Alexander Company should pay all expenses appertaining to the purchase of said lands, including the purchase price thereof, and that, pursuant to such agreement, Martin, Alexander, and Copeland transported said entrymen, at various times between the 1st of August, 1899, and the 15th of September, 1900, from their homes at or near Pike City to Camden, Ark., to make said entries and proofs thereon, and that the railroad fares to and from Camden, hotel bills at Camden, all fees paid at the land office, cost of publication of entries by each entryman, and the purchase price of the lands were all paid by either Martin, Alexander, or Copeland. The United States further alleged that if there was no agreement between the entrymen and the Martin-Alexander Company that conveyances would be made to the company, each and every of said entrymen made his or her entry on speculation and not in good faith for the purpose of appropriating the same to his or her own use and benefit, which purpose was well known to the said company and that said company aided and assisted in obtaining the lands from the Government for the purpose of speculation; that after receiver's receipts had been issued to said entrymen they, with the exception of three of them, executed conveyances of the timber on their entries to the Martin-Alexander Company; that without knowledge of said frauds pat-

ents to the lands were issued by the United States between the dates above given; that on January 14, 1901, the Martin-Alexander Company sold and transferred to the defendant, The Detroit Timber and Lumber Company, all of said timber contracts and leases for the timber on the lands in suit and that before and at the time of such sale The Detroit Timber and Lumber Company had full and complete knowledge of all the fraudulent acts of Martin, Alexander, and Copeland, and of those who made the entries, the fraudulent agreements with the said entrymen, and full and complete knowledge that the affidavits filed by them were false and that the entries had been made for the use and benefit of the Martin-Alexander Company; that since the purchase of said timber contracts by The Detroit Timber and Lumber Company it has obtained deeds to twenty-seven of the tracts of land; that a large quantity of timber had been cut from said lands by The Detroit Timber and Lumber Company and that company was still cutting timber therefrom.

The bill prayed that all of said patents, as well as the contracts and leases from the original patentees, be declared null and void and canceled and that title to all of said lands be vested in the United States; that an account be taken of the timber cut and removed from said lands by the two companies and that the United States have judgment against each for the value of the timber cut by it; that an injunction issue restraining The Detroit Timber and Lumber Company and all persons claiming under its authority, direction,

or control from cutting any timber on said lands until the further order of the court.

On April 19, 1902, a temporary injunction was issued in accordance with the prayer of the bill (Rec., p. 15).

On June 3, 1902, the Martin-Alexander Lumber Company filed its answer in which it denies that Martin, Alexander, and Copeland entered into any agreement with the applicants for land conveyed to it, or the timber on the lands, or that any of the persons making the entries acted on behalf of it, and denies further that any contract or agreement whatever about said lands or the timber thereon was ever made between it, or any person or persons for it, and the entrymen until after the land had been purchased and paid for. The answer further states that the Martin-Alexander Company is informed and believes that the lands were applied for and purchased in good faith to appropriate only to the use of those who applied for them. The answer further denies that it was agreed by and between said Martin, Alexander, and Copeland and each of the entrymen prior to the making of said entries that the company should pay all expenses incident to the purchase of said lands, including the cost of same, or that Martin, Alexander, and Copeland transported the entrymen from their homes to the land office to make the entries, or that they paid their railroad fares, hotel bills, etc. The answer further denies that after said entries were made and after the purchase money and land office fees had all been paid and after receiver's receipts had been issued to the entrymen

that said entrymen executed timber contracts to the company conveying the timber growing on the lands, or that Martin, Alexander, and Copeland induced and procured the entrymen to make false and fraudulent affidavits before the land office. The answer admits that the Martin-Alexander Lumber Company sold its property to The Detroit Timber and Lumber Company, but denies that the Detroit Company had any notice of any fraudulent acts of Martin, Alexander, and Copeland as alleged in the bill and alleges that no such fraudulent acts had been committed by Martin, Alexander, and Copeland, and that none of said entries were made for the benefit of the Martin-Alexander Company. The answer further denies that it and the Detroit Company have cut and removed timber from the lands in controversy to the amount alleged in the bill ($60,000) and denies that the plaintiff has any right to ask for an accounting.

On May 19, 1902, The Detroit Timber and Lumber Company filed its separate answer, in which it sets up that in making its purchase from the Martin-Alexander Lumber Company and taking deeds from the entrymen it was an innocent purchaser.

Thirty-eight of the entrymen answered, but their answer is excluded from the record in the Circuit Court of Appeals and from the record in this court.

The land without the timber is of no value.

Upon final hearing the Circuit Court dismissed the bill, but the injunction was continued by said court pending an appeal to the Circuit Court of Appeals;

such appeal was perfected and the injunction was continued in force by the Circuit Court of Appeals until a final hearing of the appeal was therein had. The Circuit Court of Appeals (Rec., p. 443) decided that The Detroit Timber and Lumber Company was an innocent purchaser of the timber and of the legal title to twenty-seven tracts of land for which it had obtained deeds from entrymen and that as to the remaining seventeen tracts of land, the title to which still stands in the original applicants and patentees, The Detroit Timber and Lumber Company owns the timber thereon and has the right to remove it according to the terms of the timber contracts entered into between the entrymen and its vendor, the Martin-Alexander Company. The Circuit Court of Appeals, however, decided that while there was no evidence of any agreement by the entrymen by which the title which they might acquire should inure to the benefit of any person except themselves, they did, in fact, obtain the land *on speculation for the use and benefit of the Martin-Alexander Company and not in good faith to appropriate it to their own exclusive benefit.* As to the Detroit Company, therefore, the decree of the Circuit Court was affirmed, but as to the seventeen tracts of land, the title to which had not passed to the Detroit Company, the decree of the Circuit Court was reversed and the case was remanded to that court with instructions to enter a decree to the effect that said seventeen patents be voided with costs in favor of the United States against the entrymen and the Martin-Alexander Lumber Company. Upon the appeal to

this court the Circuit Court of Appeals, on the same day upon which the appeal was allowed, continued the injunction until the third Monday of October, 1904. On October 15, 1904, this court was asked to continue such injunction pending its decision and the final determination of the case, and on October 24, 1904, the motion was granted.

The United States appeals from the decree of the Circuit Court of Appeals in so far as it holds The Detroit Timber and Lumber Company an innocent purchaser.

ASSIGNMENT OF ERRORS.

1. The court erred in refusing to hold that prior to the entries made at the United States land office at Camden, Ark., by defendants, John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robbie J. Hughes, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Emma E. Lintz, Bill D. Copeland, George T. Colston, Henry Jones, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Gus C. Copeland, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Sherman L. Garrison, Barbara A. Garrison, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary F. Davis, Emma J. Moran, Jim S. Pennington,

Jennie V. Pennington, Charles M. Mackey, and Carrie M. Hicks, an agreement was entered into by and between each and every of said entrymen and entrywomen and their codefendant, the Martin-Alexander Lumber Company, that the entry made by each of them, respectively, should be made for the benefit of the Martin-Alexander Lumber Company in order that it might obtain the timber growing on the lands covered by said entries.

2. The court erred in refusing to hold that the appellee, The Detroit Timber and Lumber Company, prior to its purchase of timber deeds and contracts from its codefendant, Martin-Alexander Lumber Company, had knowledge of the fact that the entries covered by said timber deeds or contracts were made at the United States land office under an agreement between said Martin-Alexander Lumber Company and each and every of the entrymen and entrywomen; that the entry made by each of them, respectively, should be made for the benefit of said Martin-Alexander Lumber Company in order that it might obtain the timber standing and growing on said entry.

3. The court erred in refusing to hold that The Detroit Timber and Lumber Company, prior to its purchase of timber deeds or contracts from its codefendant, Martin-Alexander Lumber Company, had knowledge of the fact that the entries of lands covered by said timber deeds or contracts were made at the United States land office at Camden, Ark., by each and every of the entrymen and entrywomen on speculation.

4. The court erred in refusing to hold that The Detroit Timber and Lumber Company was not an innocent purchaser of the lands and the contracts for timber from lands described in complainants' bill.

5. The court erred in holding that said Detroit Timber and Lumber Company is entitled to the timber from seventeen tracts entered by the following defendants: John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland.

6. The court erred in holding that appellant is entitled to no relief against The Detroit Timber and Lumber Company.

7. The court erred in directing that appellant's bill be dismissed as against The Detroit Timber and Lumber Company, Martin-Alexander Lumber Company, Robbie J. Hughes, Emma F. Lintz, Henry M. Lintz, Rosa L. Anderson, William F. Anderson, Bedford F. Patterson, Emmett S. Keebaugh, Charles W. Fuller, Henry P. Hughes, Stephen A. Fuller, Alvin Pry, George W. Cooper, Ezekiel Y. Fuller, Willis Cooper, Thomas Roberts, Mittie C. Roberts, Lawrence C. Horne, William F. Waits, Seborn Z. Moran, Charles W. Davis, Bill Dorsey, Mary F. Davis, Emma J. Moran, Jim S. Pennington, Jennie V. Pennington, Charles M. Mackey, Carrie M. Hicks, and D. D. Brunson.

There is a cross appeal by the Martin-Alexander Lumber Company and seventeen entrymen as to so much of the decree of the Circuit Court of Appeals as holds the seventeen patents void, with costs against the entrymen and the Martin-Alexander Lumber Company.

ASSIGNMENT OF ERRORS (CROSS APPEAL).

1. That the court erred in holding that John H. Scott, Thomas J. Clements, Jim P. Copeland, John H. Wilson, Robertson C. Gregory, Martha Gregory, Joseph O. Means, Archibald G. Winslow, Caroline H. Means, Emma Winslow, James F. Patterson, Gus C. Copeland, George T. Colston, Henry Jones, Sherman Garrison, Barbara Garrison, and Bill D. Copeland, or any of them, applied to enter the lands he or she obtained on speculation for the use and benefit of this appellee and not in good faith to appropriate it to his or her own exclusive benefit.

2. That the court erred in holding that any of the said entrymen made his or her entry on speculation, for the use and benefit of this appellee, and not in good faith to appropriate it to his or her own exclusive benefit.

3. That the court erred in reversing the decree of the Circuit Court.

4. That the court erred in rendering a decree for the costs against this appellee.

5. That the court erred in not rendering a decree affirming the decree of the Circuit Court.

Summarizing the foregoing review, it seems that, as the case now stands before this court, the United States recovers nothing by its bill except the legal title to seventeen tracts of land, without the timber thereon. It recovers nothing for the timber taken from the forty-four entries prior to filing its bill. The Detroit Company gets the legal title to twenty-seven of the tracts and the timber on all forty-four tracts, but is enjoined from taking the timber until the final determination of the suit. The seventeen entrymen who have not parted with their legal titles are deprived thereof and costs of suit are assessed against them and the Martin Company.

ARGUMENT.

The cross-appeal attacks the decision of the Circuit Court of Appeals holding that each of these forty-four entrymen applied to enter the lands he or she obtained on speculation for the use and benefit of the Martin Company and not in good faith to appropriate it to his or her own exclusive benefit. The facts disclosed by the record (see testimony of Copeland, Rec., pp. 38–44) and found by the Circuit Court of Appeals in its opinion (Rec., p. 443) so clearly establish this fact that the Government is willing to forego any extended discussion of the question at this time. Escape from the conclusion reached by the Circuit Court of Appeals upon this point is impossible. A recital of these facts, however, is necessary to an intelligent discussion of the only real question in this case, which is the *bona fides* of the Detroit Company in its purchase of the

timber contracts and its subsequent purchase of the lands:

The Martin-Alexander Lumber Company maintained its sawmill in the vicinity of these lands. It was the only mill in that neighborhood. It naturally desired to purchase timber, and its only source of supply was the public lands in that vicinity. Knowing that the only manner in which the lands could be obtained by any one was through the Stone and Timber Act, Martin and Alexander arranged with Copeland, who seems to have been a confidential employee, to induce a number of persons, a large majority of whom were employees of the company, to make entries under the act. Copeland visited these persons, told them they could take up land under the act, that the company would pay 50 cents per thousand feet for the timber, that the value of the timber would be in excess of the price of the land, and that the company would advance them the money necessary to buy the land and to meet all expenses incident thereto. Copeland selected the land for each one, or at least assisted him in doing so. He also conducted the entrymen to the land office in squads, paying their traveling expenses. Two journeys were necessary—one to make their applications and one to pay for the land and obtain their final receipts. He paid not only the traveling expenses, but also the fees for the publication of the notices required by the statute and when the time came to pay for the lands the company lent to each of the entrymen the amount required,

whereupon the entryman obtained his final receipt Immediately thereafter each entryman made a promissory note in favor of the Martin Company for the amount advanced by the company with interest at 8 per cent per annum. A written agreement was then entered into between the Martin Company and the entryman by which the entryman sold and conveyed to the company all timber and trees upon his land and the right to enter and take them. The company agreed to pay the entryman 50 cents per thousand feet, the amount which it had advanced to be first deducted before any cash should be paid to the entryman, and 8 per cent interest in monthly installments as the timber should be cut and removed from the land. (For sample agreement, see Rec., p. 35.) Upon the execution of these agreements the promissory notes which had been given by the entrymen in the first instance were canceled and surrendered. This form of transaction took place between the company and all but three of the entrymen. These three refused to give notes or to make timber contracts with the Martin company, unless the company would consent to pay them something for the land in addition to the price of the timber. (Rec., pp. 254, 287.) Deeds from these three persons were afterwards obtained by a lawyer employed by the Detroit company for that purpose. (Rec., p. 44.) The forty-four entries were made at various times between August 21, 1899, and September 6, 1900. The land without the timber is of no value, and the only market for the timber in

that neighborhood was the Martin company. These are the facts, briefly stated, which left no doubt in the minds of the learned judges of the Circuit Court of Appeals that the lands were not entered for the exclusive use and benefit of the entrymen, but for the benefit of the Martin Company.

The case is the same in principle, indeed it is the same in fact, as that of the *United States* v. *Trinidad Coal and Coking Company.* (137 U. S., 160.) In that case certain stockholders and employees of the company made entries on coal lands in their individual names, the company paying the price of purchase and the expense incident to the acquisition of the lands by the entrymen. The company itself was disqualified, as was the case with the Martin Company. Patents were obtained by the entrymen whereupon they conveyed to the company. This court, speaking through Mr. Justice Harlan, at page 166, said:

> It is contended that the case made by the bill is not within the prohibitions of the statute, although the demurrer admits that the Trinidad Coal and Coking Company acquired the lands in dispute pursuant to a scheme whereby the several tracts were to be entered for its benefit, in the name of certain persons, its officers, stockholders, and employees, the title, when thus obtained, to be conveyed to the company, which should, and did, bear all the expenses attending the entries and purchases from the Government. This contention can not be sustained unless the court lends its aid to make successful a mere

> device to evade the statute. The policy adopted for disposing of the vacant coal lands of the United States should not be frustrated in this way. It was for Congress to prescribe the conditions under which individuals and associations of individuals might acquire these lands, and its intention should not be defeated by a narrow construction of the statute.

Whenever the Government attempts to have patents to its lands set aside by reason of fraud amounting to a violation of the terms of the Stone and Timber Act, the defendant immediately brings to the attention of the court the case of *United States* v. *Budd* (144 U. S., 154). In the Circuit Court of Appeals that case was urged with the same display of confidence that it is in all cases of this character. It is a significant fact, however, that the learned judges of the Circuit Court of Appeals totally ignored the Budd case and the arguments based upon it so far as the fraud of the entrymen in making their entries for the use of the Martin Company is concerned. Judge Sanborn, of the Circuit Court of Appeals, did mention the case in determining the question of *bona fide* purchase on the part of the Detroit Company, but that is all. The Circuit Court of Appeals wasted no time in discussing the facts as disclosed by the record upon the question of fraud. They appealed to that court with compelling force, and it will be observed that the conclusion upon that point was speedily reached. In the brief for the appellees in this court,

counsel, undaunted by the rebuke of the Circuit Court of Appeals, urge the Budd case upon this court. For the information of the court it may be said that in that case the bill charged that a single entry was made by Budd, who paid the purchase price and received the receiver's receipt, and thereafter a patent was issued to him by the Government; that prior to the issuance of the patent he sold and conveyed the land to one Montgomery upon a specific contract made between Budd and Montgomery before the entry was made. The case was based upon the restriction of the statute that the entryman shall not, directly or indirectly, make *any agreement or contract* by which the title he might acquire should inure in whole or in part to the benefit of any person except himself. The case was disposed of by this court upon the ground that the allegations of the bill were not amply sustained by the proof and upon the familiar principle of law that fraud must be clearly alleged and fully proved, and also upon the principle that it must be presumed that all steps essential to the taking out of a patent are regular unless the contrary clearly appears.

There is another striking difference between the case at bar and the Budd case. In the latter there was but one entry, but here there was a gigantic conspiracy upon the part of the officers of a lumber company to gather unto themselves an immense tract of land through a premeditated scheme.

The brief for appellees lays great stress upon the good faith and honesty of Alexander, Martin, and

Copeland and upon the fact that they testified that they studied the law with the idea of complying with it instead of violating it. The brief also deals at great length with the honesty, simple-heartedness, unsophisticatedness, illiteracy, and good nature of the entrymen. Without conceding that these entrymen possess these characteristics it is enough to say that they may possess them and may have had no intention of violating the law and yet have done so. It is for the courts to construe the Stone and Timber Act; not Martin, Alexander, Copeland, and their followers.

The conclusion of the Circuit Court of Appeals upon the question of fraud is based upon testimony given by the defendant entrymen themselves. The Government boldly called these defendants as witnesses and wrung from them the facts in the case. It had no other recourse. In the brief for the appellees will be found excerpts from the testimony of some of these defendants bearing favorably upon their case. Let us now take these same witnesses and see what they said in addition to that part of their testimony to which counsel called attention:

HENRY JONES testified:

That Mr. Copeland showed him the land he was to take up; that when his wife refused to make an entry Mr. Martin and Mr. Copeland expressed disappointment, and that Mr. Martin finally said "Never mind, that is all right, let somebody else take that" (Rec., pp. 89, 90); that Mr. Martin said to him, before he left to make the entry, "Understand, Jones, there is no

agreement between you and the company to buy that timber from you." This one bit of testimony on the part of Jones, who was the stenographer in the office of the Martin Company, reveals beyond the shadow of a doubt the whole scheme and purpose of this affair. What was the necessity for that remark? It was a warning to Jones that he should deny to everybody that there was any purpose upon the part of the Martin Company to buy his timber.

GEORGE T. COLSTON testified:

That Mr. Means, of the Martin Company, brought the matter of his making an entry to his attention; that he went out with Copeland to look at some property; that Means told him he could sell the timber after he had taken up the land for enough money to pay for the land and more; that Copeland gave him a paper containing a description of the land which he was to take up. (Rec., pp. 107, 109.) Asked on cross-examination whether he understood that he could not make any contract with reference to the sale of the land or the timber, he replied "He (Copeland) led me to believe that I could not make any *writing*." And "he led me to believe that unless there was an agreement and a contract drawn up that it was no contract." The learned trial judge saw the significance of this testimony, for at page 117 of the record he asked the witnesses how it happened that Jones told him that a contract that was not drawn up would not amount to an agreement.

Counsel for appellees, at page 27 of their brief, invite the court's attention to the testimony of Stephen

Fuller. We do the same. His testimony discloses the fact that he did everything that Copeland told him to do, signed every paper that was given him to sign, doesn't know whether the Martin Company owes him any money or whether he owes the Martin Company any money; doesn't know what became of his promissory note. He could not even say for certain whether a signature was his own. (Rec., p. 134 et seq.)

E. Y. FULLER testified:

That he heard from Copeland that land was to be taken up; that Copeland told him he could get him the money with which to do it; that Copeland gave him leave from his work with pay in order to take some parties to the Government lands.

CHARLES W. DAVIS testified:

That his attention was attracted to making an entry by Mr. Copeland; that he told Mr. Copeland that it was a new thing to him and that he did not understand it clearly; that Mr. Copeland asked him if his wife desired to make an entry also; that he told him he did not know; that Copeland was to take him out and show him a *certain* tract of land. (Rec., pp. 159, 160.)

R. C. GREGORY testified:

That he went into the transaction because he thought that he could make money out of it. (Rec., p. 181.)

MARY DAVIS testified:

That she doesn't know whether her indebtedness to the Martin Company has been paid off; that she only knows what Mr. Copeland told her; that Mr. Copeland

has not told her anything since she signed the contract. (Rec., pp. 191, 192.)

ARCHIBALD G. WINSLOW testified:

That he was an office employee of the Martin Company; that he went out with Mr. Copeland and three others to select land. We invite the court's particular attention to the following examination of this witness:

> Question. How did you go; in a livery-stable rig?
>
> Answer. In a livery-stable rig.
>
> Question. Who paid for that?
>
> Answer. I do not know who paid for it; it was my understanding that it was to be charged to my account.
>
> Question. Personal account?
>
> Answer. Timber account, I believe.
>
> Question. Did you carry a timber account there?
>
> Answer. No, sir; that point in my mind is not clear as to whether it was to be charged to my timber account or not.
>
> Question. Why did you say timber account?
>
> Answer. I do not know why I said that.

Here was a witness who unwittingly gave the whole scheme away by testifying that he had a timber account before he had taken the first step in the process of making his entry. (Rec., pp. 195, 196.)

WILLIAM F. WAITS testified:

That he took up the land for the purpose of making money.

SEBORN Z. MORAN testified:

That he made an entry; that after he did so he refused to sign a timber contract; and that upon doing so Mr. Alexander said "Out of forty-three you are the first that ever refused to sign the contract as soon as they got the receipt; the balance of them signed before they proved up their lands."

From these facts, disclosed by the defendants themselves, the court will see that all the comments of counsel as to the manner of men these witnesses were and what they said can not weigh against the above significant facts.

The question now to be determined is whether the Detroit Company is such a bona fide purchaser as is contemplated by the act of Congress which provides that if any person shall swear falsely in making his entry he shall forfeit the money which he may have paid for the lands, and all right and title to the same, and that any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void.

THE DETROIT COMPANY HAD ACTUAL NOTICE.

Continuing to state the facts bearing upon the transaction, which are undisputed, let us see what this record discloses:

The Martin Company was a close corporation. E. B. Martin, its president, owned 58½ per cent of the stock and, with the exception of one share, A. V. Alexander, its secretary, controlled all of the remainder which was owned by himself, his wife, and J. O. Means.

The office of the company was in Pike City, Ark. The Detroit Company had its office in St. Louis, Mo., and U. L. Clark was its president. Its capitalization, at the time the transaction between these two companies was proposed, was $40,000. About December 20, 1900, Alexander went to St. Louis and offered the property of the Martin Company to Clark. He requested Clark to purchase Martin's interest and to let him retain his interest. Clark refused this proposition, stating that the Detroit Company would not purchase a fractional interest of the Martin Company. It would take the entire property or nothing. Alexander then asked Clark to permit him to take stock in the Detroit Company for his interest in the Martin Company. Clark replied that the Detroit Company had no stock to sell, but that it might increase its stock, and if it did so Alexander's proposition might be accepted. The Detroit Company's inspector was sent to Arkansas to examine the lands upon which the Martin Company was supposed to own timber. This inspector made an examination as to the amount of timber on the lands. He made no investigation as to title. It was finally agreed that the entire property of the Martin Company should be turned over to the Detroit Company upon the basis of $60,000. Thirty-five thousand dollars was paid for the interest of Martin and J. O. Means. The remainder, or $25,000, was to be paid to Alexander for himself and wife. Cash was paid for the interest of Martin and Means and the payment of the sums due the Alexanders was deferred

until the Detroit Company could consider their application for stock. Later the capital stock of the Detroit Company was increased from $40,000 to $140,000 and stock to the amount of $25,000 was issued to the Alexanders. The Detroit Company took the entire property of the Martin Company and assumed all outstanding debts. On January 14, 1901, the Martin Company passed a resolution to sell to the Detroit Company, a formal deed transferring the property was made and dated March 1, 1901, and this deed was acknowledged May 2, 1901.

On January 14, 1901, the day upon which it was determined to make the sale, Alexander became general manager of the Detroit Company (Rec., p. 61). He was on the 1st day of April, 1901, elected secretary of the company (Rec., p. 62). The sign of the Detroit Company at Pike City bore his name and after it the word "Secretary" (Rec., p. 410). Clark became president of the Martin Company (Rec., p. 397) and the affairs of that company were wound up. It will be remembered that the deed of transfer was acknowledged and delivered on May 2, 1901, and it is the contention of the Government that the sale was not consummated until that day.

Now, it is an undisputed fact that Alexander and Martin, on account of the need of material by the Martin Company, arranged with Copeland to secure such material through the methods hereinbefore described, which methods have been condemned by the Circuit Court of Appeals and declared to be fraudulent.

Alexander occupied a dual position in the Detroit Company, general manager and secretary. The first-named office may not be an executive office, but that of secretary is such an office beyond any doubt, and knowledge on the part of an executive officer is notice to the company.

Thus the secretary of the Detroit Company permitted this deal to be consummated, and the deed acknowledged and delivered, with actual notice of the fraud, indeed with guilt upon his hands. It may be argued that Clark knew nothing of the fraud. Assuming, not conceding, this to be true, when the Detroit Company took Alexander into its service it became affected by the notice which Alexander himself had and it must stand the consequences. The Detroit Company will not contend before this court, under such a state of facts, that its hands are clean. It was contended below, and will doubtless be contended here, that this was a deal between two companies—that Clark represented one and Alexander the other. This is true, but the fact remains that it did not become a deal until *after* Alexander became an executive officer of the Detroit Company. If such a transaction is innocent and such a purchase is bona fide, as the Detroit Company contends, then it is difficult to see any room anywhere for such elements as guilt and *mala fides*. It hardly is possible that any court will permit a self-confessed conspirator, by joining in the ownership of the fruits of his conspiracy some one whom he claims to be innocent, to deprive the Government of a just recovery of its stolen property.

Again, there was a merger of these two companies and such merger did not have the effect of destroying disabilities which affected the property of the Martin Company. These disabilities followed in its wake. The Detroit Company was not a purchaser at all in the legal sense of the word. The two companies became one.

It matters not in what words the contract covering the transaction between the two companies was made if the effect of the transaction was to merge the two companies. His honor, Judge Sanborn, in passing upon this question of merger, stated that no merger was pleaded by the complainant. The bill charges The Detroit Timber and Lumber Company with notice of the fraud. If the facts in the case are sufficient to warrant the conclusion that a merger actually took place the company stands charged with notice of the fraud. Quoting from Clark and Marshall on "Private Corporations," section 348:

> Ordinarily the consolidating corporations are dissolved by the consolidation and cease to exist, and an entirely new and distinct corporation is created as of the time of the consolidation. It was formerly thought that this was always the effect of a consolidation, but it is now well settled that it is not necessarily so, and that a consolidation may be effected by the merger of one corporation in another, and continuance of the latter with the rights, franchises, privileges, and property of the former in addition to its own. (*Central Railroad and Banking*

Co. v. *Georgia*, 92 U. S., 665; *Meyer* v. *Johnston*, 64 Ala., 603.)

When the rights, franchises, and effects of two or more corporations are, by legal authority and agreement of the parties, combined and united into one whole and committed to a single corporation, the stockholders of which are composed of those (so far as they choose to become such) of the companies thus agreeing, this is, in law and according to common understanding, a consolidation of such companies, whether such single corporation, called the consolidated company, be a new one then created or one of the original companies continuing in existence with only larger rights, capacities, and property. (*Meyer* v. *Johnston*, *supra*.)

The mere purchase by one corporation of the property and franchises of another, either directly from the latter or at an execution or foreclosure sale, does not operate as a consolidation of the two corporations in the absence of express statutory provision to this effect. But it has been held that a consolidation, and not a mere purchase, by one corporation of the property and franchises of another is effected by a transfer of all the property, stock, and franchises of one corporation to another under an arrangement by which the stock of the latter is issued to the stockholders of the former in exchange for their stock. (*Chicago, Santa Fe, etc., Ry. Co.* v. *Ashling*, 160 Ill., 373.)

And section 354, at page 1064, says:

Sometimes a statute authorizing consolidation, while it does not provide for continuance

of the consolidating corporations for all purposes or indefinitely, expressly provides for their continuance for certain purposes, as for the purpose of adjusting their liabilities or transferring their property. (Citing numerous cases.)

Where corporations are merged into and constitute one, it is a consolidation. (*Philadelphia, etc., R. Co.* v. *Howard*, 13 How., 333.)

In *Chicago, etc., R. Co.* v. *Ashling* (*supra*), it was held that a transaction whereby one railroad company conveyed all its property to another, the latter stipulating to assume the indebtedness of the former and to issue its stock to the stockholders of such company in exchange for their stock *was a consolidation and not a purchase and sale.* A consolidation could be made by continuing in existence one of the original corporations. (See also *Hill* v. *Nisbet*, 100 Ind., 341.)

Morawetz on "Private Corporations," a high authority, volume 2, second edition, page 943, under the head "Consolidation," says that two corporations may be united by dissolving one of the companies, preserving the other company, and issuing shares in the second company to the shareholders of the first. At the bottom of page 943, he says:

> The consolidation of several corporations implies a transfer to the united company of the whole concern of each of the original companies. And, unless the contrary be expressly provided, it seems that the purpose and enterprise of the new company would be to carry on the business of both of the original companies.

Tested by these rules of law, how does the transaction between these two companies stand? The instrument by which the transfer took place will be found at page 423 of the record. Its essential provisions are that the Martin Company transfers and delivers to the Detroit Company its entire sawmill plant and everything connected with it, including book accounts and notes due it, as of January 1. It also transfers and assigns all timber contracts held by it for timber on lands in Pike County. It also grants all of its lands in Pike County. The Detroit Company assumed all debts of the Martin Company, and agreed that the property of the Martin Company "shall be received into the company of the party of the second part *as $60,000 of paid-up stock*, twenty-five thousand of which shall be issued to A. V. Alexander and B. M. Alexander, and they shall be entitled to all profits from it from January 15, 1901; the remainder shall be divided among the present stockholders as they may decide at the next meeting." It was further agreed that all of the stock held by the different parties in the Martin Company should be returned to the president of said company and placed in the stock book, duly canceled, *and the book turned over to the president of the Detroit Company.* It will be thus seen by this instrument that the Detroit Company really took over all of the stock of the Martin Company, called it in, and paid some of the holders in cash, and issued stock of the Detroit Company to others.

Counsel for the appellees, at page 84 of their brief,

call the court's attention to the maxim that equity always looks at the substance of things and not to the form—a very apt observation from the Government's view of this case. They further have the temerity to state that this transaction can not be regarded as a merger for the reason that they had not the legislative authority to bring about a merger. This proposition is met by two obvious answers:

First, the fundamental principle of law that no corporation can defend its acts or change their character in law by the claim that such acts are *ultra vires;*

Second, that legislative authority is not necessarily a condition precedent to a legal merger. Such a merger may always be ratified by the legislature after it has taken place. (*Bishop* v. *Brainerd*, 28 Conn., 289; *Mead* v. *New York, etc., R. Co.*, 45 Conn., 199.)

THE DETROIT COMPANY HAD CONSTRUCTIVE NOTICE.

Counsel for the Government urged upon the Circuit Court of Appeals the proposition that at the time the Detroit Company took over the timber contracts and lands, patents therefor had not been issued by the land department and that no one who takes before the issuance of such patent can claim a *bona fide* purchase, citing in support thereof the cases found in the court's opinion at page 450 of the record. The Circuit Court of Appeals held that these authorities failed to sustain the proposition; that they were cases in which the final receipts, which evidenced equitable title, were voided by the land department before the legal estate had been vested in the innocent purchasers,

and that they established the proposition that the legal title is indispensable to the defense of *bona fide* purchase. The Detroit Company having obtained the legal title to twenty-seven of these tracts of land before this suit was brought, it was held that it could not be charged with constructive notice, and that its title to the twenty-seven tracts of land and the timber on all forty-four tracts is indefeasible. We beg leave to suggest that the learned Court of Appeals here fell into a curious error as to the timber on the seventeen tracts of land. It held that if patents to land are attempted to be set aside on the ground of fraud the legal title is indispensable to the defense of *bona fide* purchase. The decree of the court voids the title to these seventeen tracts because the title is fraudulent and has not passed to a *bona fide* purchaser, and yet it holds the title of the Detroit Company to the timber good when that company took, in some cases, a mere equitable title to the timber before patent (taking only what equity its vendor had), and has not covered itself by the acquisition of the legal title. Even counsel for the appellants, in their brief at page 70, admit this. They say "the so-called timber contracts were in fact deeds for all the timber standing upon the land. They were absolute conveyances, and, as between the entrymen and Martin-Alexander Lumber Company, passed the title the entrymen had then or might thereafter acquire to the timber." Now, all the title the entrymen had was a defeasible equity, which title has been annihilated upon the ground of fraud. The Detroit

Company took only such title as the Martin Company had, because patents had not issued for all these seventeen tracts, and the Martin Company had only what title the entrymen had. The statute of Arkansas quoted by the counsel for appellees at page 72 of their brief has no application. Here no person attempted to "convey any real estate by deed purporting to convey the same in fee simple absolute." All that took place as to these seventeen tracts was a mere contract for the sale of the timber on the land. Moreover, this statute can not override the Stone and Timber Act as construed by the Federal courts. The case of *Hawley* v. *Diller* (178 U. S. 476), clearly shows the error in this decree. Granting for the purpose of argument that the Detroit Company's title to the twenty-seven tracts and the timber thereon is complete, can it be said that its purchase of the timber on these ~~seventeen~~ tracts before the issuance of the patent is bona fide? The fact that the patent was afterwards issued to the entrymen does not cure the defect, otherwise a patent could never be voided. We submit that whatever may be the decision of this court as to the title to the twenty-seven tracts, the timber on Some of these seventeen tracts, by force of the very decision attacked by the cross-appeal, belongs to the Government and that it should have an accounting from the two companies as to the amount of timber taken therefrom prior to the issuance of the injunction.

But the Government unhesitatingly contends that in any event where one takes a title to public land, or any

interest therein, before the issuance of patent, he stands charged with notice of any fraud in the acquisition of the land by the entryman. We contend that that is the logical inference to be drawn from the case of *Hawley* v. *Diller*, although in that case it was not necessary to analyze the question that far.

We now pass to a consideration of the question as to whether the Detroit Company had notice of any fact relating to this fraud sufficient to put it upon inquiry and whether it took such steps to assure itself of the title of its vendor as the law requires.

When it was agreed to merge the Martin Company with the Detroit Company on January 14, 1901, patents to thirteen of the tracts of land had been issued. The Martin Company had never taken deeds to the lands covered by these patents, nor did the Detroit Company take deeds to any of the lands until along in April. From that month on to September 10, 1901, it had succeeded in taking legal title to twenty-seven of the forty-four tracts. When asked why he took deeds from these entrymen when he already had contracts for the timber on the lands, Clark replied that he disliked the trouble of keeping timber accounts, and that this would be obviated by holding the fee simple title to the land. For deeds to these lands he paid to the entrymen as high as $75, 100 per cent higher than the estimated value of the timber in excess of the purchase price of the lands. These deeds were obtained only after much persuasion, and in three cases a lawyer was employed specially for that purpose.

When Clark negotiated with Alexander he made no investigation whatever as to the title of the land the timber on which was covered by the timber contracts. Nothing was said as to the title except the statements of Martin and Alexander that the title was "all right." (Rec., pp. 67.) On the examination he testified as follows:

> Question. Did you get any deeds at all from them in which any of the lands involved in this case were conveyed?
>
> Answer. Fee simple deeds?
>
> Question. Yes, sir.
>
> Answer. No, sir.
>
> Question. All that you got in regard to lands involved in this case were timber deeds or timber contracts?
>
> Answer. Yes, sir.
>
> Question. How many of these did you get?
>
> Answer. I think there were thirty-nine or forty, probably forty-one; I am not certain.
>
> Question. Did you get any receiver's receipts covering the same lands described in those timber contracts or deeds?
>
> Answer. No, sir.
>
> Question. You say no receiver's receipts at all?
>
> Answer. No, sir.
>
> Question. Did you ever have any of those receiver's receipts in your possession?
>
> Answer. No, sir.
>
> Question. They were never in your hands at all?
>
> Answer. No, sir.
>
> Question. Did you ever make any investigation of the title to the lands described in those

timber contracts before you completed your purchase?

Answer. Nothing, only Mr. Martin and Mr. Alexander told me that the title was all right. (Rec., pp. 66–67.)

Counsel for the appellees contend that Mr. Clark's duty stopped with the mere assurance from the vendor that the title was all right. Clark knew that the company had no record title to the lands described. He stated on the stand that the Martin Company had final receipts covering the timber tracts. Had he supposed the Martin Company held deeds to the land, he of course would have asked for them in place of the mere final receipts. He had no legal right to rely upon the bare statement of interested parties whose interest might prompt them to make false or misleading statements.

Price v. *MacDonald* (54 Am. Dec., 657).

Now, the dates of the timber contracts fall upon the heels of the date of the final receipts, and we contend that this, connected with the fact that there were book accounts with every one of these entrymen, except three, all of the same character and amounts, would have made any man who desired to know what he was buying stop and think. Clark either did not want to know the real facts in this case or else he was passive to a degree that makes him chargeable with notice of them. Here were forty-one timber contracts upon which, except thirteen, patents had not issued, all dated immediately after the issuance of final receipts, attempting to convey to a lumber company the timber on the

lands, with the books of the Martin Company showing that that company had advanced the money to pay for the land and all expenses incident thereto. How, then, could Clark have helped knowing that these lands were not entered in good faith to appropriate to the use of the entrymen? As is said by Pomeroy on Equity Jurisprudence, volume 2, section 762:

> A purchaser may part with a valuable consideration, may have no notice of any opposing claim, and yet lack the good faith which is essential to render his position a protection and his defense available. The party claiming to be a bona fide purchaser must come into a court of equity with absolutely clean hands.
>
> Passive good faith will not serve to excuse willful ignorance. (21 A. and E. Ency., p. 584, and authorities there cited.)

It is useless to rehearse the testimony of Clark as to what happened when this deal was made. The sum total of it is that the Martin Company presented a trial balance which Clark accepted and upon the basis of which he dealt with the Martin Company. He made no inquiry whatever. It merely happened that Martin and Alexander stated the titles to the lands upon which the timber was growing were good (Rec., p. 395). Instead of exercising the care that the ordinary prudent business man would have exercised, Clark studiously avoided making any inquiry. It was Clark's legal duty to look into the title of these entrymen, such as it was.

> A purchaser who is put upon inquiry does not discharge his duty by making inquiry of his

> vendor alone, but must exhaust all reasonable and available sources of information. (23 A. and E. Ency., p. 515.)

As a matter of fact, the Detroit Company knew that the moneys for these lands were advanced by the Martin Company. This is shown by the fact that there were personal accounts against three of the entrymen, Moran and wife and Dorsey. These three were the ones who refused to make timber contracts. The Detroit Company, through a lawyer named Brunson, effected a settlement of these accounts with these three persons by securing a conveyance of the identical tracts of land entered by them. Did the Detroit Company make this settlement in ignorance of what these personal accounts represented? The question answers itself.

We claim that the law as laid down in *Hawley* v. *Diller*, that one who takes title before the issuance of patent can not claim to be a bona fide purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued.

The opinion of the Circuit Court of Appeals reads in part as follows:

> If the question had been put to the entrymen, to the entrywomen, to Martin, and to Alexander, they would have answered with a single voice that the statements in the applications were true, for they have so testified here.

We have already shown by the above citations that inquiry of the parties at interest is not sufficient. Could it be expected of them, when they were endeavoring to bring about a sale of their property, that they would condemn the title to it? We do not contend that inquiry should have been made of them.

The opinion then reads:

> If inquiry had been made of the officers of the land department, they would have replied that there was no falsehood in the statements and that the entries were lawfully and regularly made, for they issued the final receipts and the patents upon them in that belief.

Had Clark taken the timber contracts and the book accounts against these entrymen, showing that the whole proceeding of entry for each one had been conducted and paid for by the Martin Company, and exhibited them to the land officers, we think their answer would have been considerably different. Under the circumstances it was wise for him to keep away from the land officers.

In a case of this kind it is never possible to show fraud clearly and beyond any doubt. Fraud always attempts to cover itself, therefore the evidence which establishes it is always circumstantial. It must be remembered that these lumber companies depend upon the timber growing upon the public lands for their source of supply. Clark was a lumberman and he knew, as well as Martin and Alexander, that this timber came from Government land. He knew about the Stone and Timber Act and he knew that it was

unlawful for entries to be made in the interest of anyone except the entrymen. These facts alone were sufficient to put him upon inquiry. This whole transaction is urged upon the court as meeting the *bona fide* purchase defense and we submit with confidence that that was its whole purpose. It is true that Martin is apparently out of the lumber business in Arkansas, but Clark and the Alexanders are still there, engaged in lumbering and marketing Government timber from large tracts of land which it has obtained in plain violation of law and in shameful defeat of the intention of Congress.

We submit that the decree of the Circuit Court of Appeals as to this fact should be affirmed; that by reason of that conclusion it should be reversed as to the timber on the seventeen tracts and as to the title to the twenty-seven tracts of land; and that the Government should have an accounting of and payment for the timber cut on all forty-four tracts before this suit was commenced.

MARSDEN C. BURCH,
Special Assistant to the Attorney-General.

HENRY M. HOYT,
Solicitor-General.

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No. 106.

Office Supreme Court U.
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JAMES H. MCKENNEY,
Clerk

IN THE

Supreme Court of the United States.

THE UNITED STATES..... *Appellant,*

v.

THE DETROIT TIMBER AND LUMBER COMPANY ET AL. ..... *Appellees.*

STATEMENT AND BRIEF FOR APPELLEES.

THOMAS C. McRAE,
JAMES F. READ,
U. M. ROSE,
GEORGE B. ROSE.

Central Printing Company, Little Rock, Ark.

IN THE

Supreme Court of the United States.

THE UNITED STATES.....*Appellant,*

v. No. 389.

THE DETROIT TIMBER AND LUMBER COMPANY ET AL. .....*Appellees.*

STATEMENT AND BRIEF FOR APPELLEES.

I.

The assignment of errors presents for the consideration of this court two distinct questions. The first challenges the bona fides of the entries; the second, the bona fides of the purchase by the Detroit Timber and Lumber Company. The case affecting them will be stated, and they will be argued separately, and in the order above set out.

The assignment of error bearing upon the first question is as follows:

"The court erred in refusing to hold that, prior to the entries made at the United States Land Office at Camden, Arkansas, by defendants, * * * an agreement was entered into by and between each and every of said entrymen, and entrywomen, and their codefendant, the Martin-Alexander Lumber Company, that the entry made by each of them respectively, should be made for the benefit of the Martin-Alexander Lumber Company in order that it might obtain the timber growing on the lands covered by said entries.

We have not been furnished with a brief for the appellant, and are therefore unable to forecast what statements will be made by counsel in this court, but presume they will follow the same general course as was pursued by counsel before the circuit court of appeals.

It was said in appellant's brief before the court that forty-one of the entrymen signed timber contracts within two or three days after their final proof was made. The evidence does not show that all the contracts were signed within a month.

It was said that Copeland selected each tract for the entrymen. With respect to many of the entries there is no proof on this subject; but there is proof that some of the entrymen selected their own lands (Rec., 100).

It was also said that the entryman Jones had prior to his entry seen blank timber contracts, but his

statement is that he never read one, until the day he signed the one made by him (Rec., 101, 103).

The testimony of Copeland as set out by appellant in circuit court of appeals was taken from an affidavit prepared by an agent of the land department, and signed by Copeland. While the statements in it are not controverted by him, his testimony upon the witness stand is much fuller, clearer and more intelligible. From this it appears: He was born in Arkansas 66 years ago; lived there continuously except four years spent in the Confederate army. He had lived in Pike County thirty-six years. Had been a farmer all his life; had preached for thirty-odd years and had done a real estate business. Had served four years as sheriff and collector of Pike county, two years as representative and four years as senator in the legislature. In 1887 he represented the Michigan Lumber Company in locating and surveying its lands. In 1894 and 1895 he was the agent of the Iron Mountain Railway lands. Was familiar with lands in Pike county and had a plat of all government lands. Persons who came there wanting to buy lands invariably came to him. Met Alexander in the spring of 1897. Had done some work for him before Martin became interested with him. At Alexander's request he showed Martin over the private timber lands near the mill. He had 700 acres bought in a body, and a considerable amount that witness had bought. Martin took an interest, the Martin-Alexander

Lumber Company was formed, and witness engaged part of his time to serve them in the timber business. When Pike City was established he laid out the town and opened a real estate office in the first house built. First heard of the Timber and Stone Act in the spring of 1889. Wrote his congressman, T. C. McRae, and got a copy of the act. Soon afterward, while passing through Camden on other business, he went to the land office and was introduced to the register, whom he did not know, by the former register, whom he knew well. He explained that he wished to learn the proper construction of the act, as he wished to be very careful not to violate the law. They sat down and went over the law thoroughly, particularly the oath required. They examined carefully the application and proof. On his return home, he told some citizens of that law, what it was, and the construction of it by the land office, and that they could take 160 acres under it. These men told him they would like to take up land under it, if they had the money. Some time after that in talking with Martin he told him of this act, of his construction of it and of the construction of the officers of the land office. Perhaps the next day he took the act to Martin, and they, with Alexander, went over it. He told them that they were good, honest reliable men who had told him they would take up land under the act if they had the money. Martin said if witness knew them to be honest and reliable he would lend them

the money, on notes, at 8 per cent without security. That was the first conversation ever had with Martin or Alexander about the Timber and Stone Act. The men he referred to were those that he had talked to, three of whom he names, and the others he does not remember. Just before this a line had been surveyed for a railroad from Pike City through Caddo Gap, which would run through this land and his own, and he believed the entries would be profitable to the entrymen and he wished to see them get the benefit. They all understood very fully that no contract could be made with regard to the land. He then went to the men who had expressed a desire to take the land, and told them the Martin-Alexander Lumber Company would lend them the money to buy the land on their notes at 8 per cent without security. They said they would take it. Nothing had been said about how the expenses would be paid. When the first trip was made to Camden he paid the expenses out of moneys in his possession belonging to the Martin-Alexander Lumber Company, and on his return reported it. Martin said it would be charged to the accounts of the parties. On subsequent trips he usually asked for expense money, and got it with the understanding that it would be charged to the accounts of the respective entrymen. After the first notices were published there was a good deal of talk about it, and numbers of men came to him and asked him to explain the law, which he did.

The pay roll of the company ran at times from two hundred to three hundred men. At times most everybody in the country worked for the company. Many people came to make inquiries of him about it. He declined to recommend for loans many more people than he recommended. He did not hunt up men to take lands; as a rule, they hunted him up. He did not approach Moran on the subject or recommend him. He never asked an entryman for his receipt. Such as he took were given him for safe keeping, because, as he supposed, he had a drawer in the safe. He never had an agreement or understanding, or knew of one, with any entrymen before he completed his entry, to the effect that his entry was made for the benefit of the Martin-Alexander Lumber Company, or that he was to convey the land or an interest in it, or the timber on it, to the Martin-Alexander Lumber Company. He did not state to the entryman Colston that the agreement prohibited by the act was a written agreement. He knew better. Knew that it applied to everything that might imply an agreement. After the entries were complete he approached the entrymen to buy their timber just as he did other owners of timber, and told them that if they executed the contracts their notes would be canceled. He paid the entrymen just what he paid all others for timber (Rec., 322, 373).

A. V. ALEXANDER, in an affidavit made at the request of the agent of the land department, corrobo-

rated Copeland, as to the origin of the entries (Rec., 62). Upon his examination in this case, when questioned as to his understanding of the provisions of the Timber and Stone Act, he said, "We knew the provisions of the law thoroughly—we knew we could make no agreement of any kind or character with the men as regards the lands or timber.' That they never made any agreement or arrangement with any party, "direct or inferred," before he received his final certificate (Rec., 404). After they had gotten their final receipts he asked the Morans and Dorsey if they cared to sell their timber. They said they were not wanting to sell, and he later asked them for notes and told them they could sell their land or timber to whoever they pleased; that all he wanted was notes, which could be renewed if not paid at maturity (Rec., 405). He gave as reasons for making the loans that he knew the lands were worth the money. If the entrymen held their lands he could make his loans out of them; if they sold them, and were honest, as they were represented to be, they would pay the loans. And when the lands passed to other owners they had as good a chance to buy the timber as anyone else (Rec., 415). No matter who the entrymen sold to, it would some day be in the market for sale (Rec., 416). The fact that lands were held by private owners would be an advantage in disposing of the mill plant (Rec., 421).

With respect to the origin of the entries and their bona fides, the testimony for the government contains the following showing:

HENRY JONES testified:

His attention was first directed to the matter by filing papers with reference to entries. He did not notice the papers particularly. They were bound together with a rubber band and he did not open them to read them. After his attention had been thus directed he spoke to Alexander, or Martin, or Copeland, he does not remember which, perhaps all of them, and told them if the matter was regular he would take pleasure in taking up 160 acres of land. They told him that it was regular (Rec., 88). There was no conversation as to how the money borrowed was to be repaid. He knew that the Martin-Alexander Lumber Company wanted timber, and in reason that he could sell his; but there was no conversation on that subject. There was no conversation about an agreement for the sale of the timber. Nothing said (Rec., 93). Four quarter sections were shown four parties. They cast lots for the first pick (Rec., 100). He never read but one timber contract. That was the one he copied his from the morning he signed it. He made several copies from the same. His answers to questions in his testimony as claimant before the register were true (Rec., 102).

GEORGE T. COLSTON testified:

That the matter of these entries first came to his attention through J. O. Means. This resulted in his going with Copeland to look at some land. He asked Copeland about the process of taking up land. Copeland told him that it could be taken up under the Timber and Stone Act, and that no contracts were made with anyone beforehand; that he could get money from whom he pleased, provided no contracts were made. When Copeland presented to him a timber contract he hesitated about signing it, and Copeland said if he did not want to sign it he could sell the timber to anybody he wanted to and return the money. That was all they wanted (Rec., 112, 113). His answers to questions in making the entry were read over to him, signed and sworn to by him, and were true. He said that he never had any conversation with Martin or Alexander, and that he had none with Copeland except the two conversations detailed (Rec., 116). And in the conversations detailed there is nothing that intimates or implies any agreement on his part to transfer any interest in the land or the timber on it until he signed the timber contract after getting his final receipt.

STEPHEN FULLER testified:

That his attention was called to the matter by seeing notices published in the paper. That he made inquiries first of one party and then of another, and

at last of "Brother" Copeland (Rec., 118, 119). That "everybody in the country went to him, mighty nigh, and put a great deal of confidence in him knowing about the land." That he had made no contract, promise or agreement of any kind to sell the land or any part of it, or the timber on it. That he was free legally and morally to sell the land or the timber to whoever he pleased, and would certainly have sold it to anybody who would have given him more than the Martin-Alexander Lumber Company. They gave him the usual price (Rec., 126, 127).

If the court will read the testimony of this simple, honest, candid old man it cannot doubt that his statement contains the truth, the whole truth, and nothing but the truth.

E. Y. FULLER testified:

That he heard that land could be taken up from different parties, among them Jim Copeland, who told him that he could take up the land under this act. Witness told him he would take it up if he could get the money. Copeland replied that he could get the money. Didn't say from whom. Copeland asked him to take his team and take some parties to see the land (Rec., 128).

He signed a timber contract, but before that time had made no contract or agreement to do it. Nothing had been said about it. He had a perfect right to sell it to anybody he saw fit, and would have sold it to any-

body else that offered him more. He knew before his entry that other people were making entries, but did not know that they were selling their timber (Rec., 131, 132).

THOMAS J. CLEMENTS testified:

He regarded his land as worth $1.00 an acre after the timber was cut. Has paid taxes on it. The timber would pay the money borrowed. Had borrowed money from Martin-Alexander Lumber Company before (Rec., 147, 148). The first conversation he ever had with Copeland with reference to the timber or the sale of any part of the land was after he had gotten his final receipt (Rec., 151).

EMMET KEEBAUGH testified:

That the matter was first brought to his attention by the fact that a number of people were making these entries. He made the entry because he understood that the land would be valuable for the timber and the land itself. They were worth more than the government price. He knew the entries were being made but did not know that the entrymen were selling to the company (Rec., 154). Copeland told him that the timber on the land was worth more than he would have to pay for it (Rec., 156). He signed a timber contract after he got his final receipt. That was the first contract, promise or agreement of any kind that he had made. He considered himself the owner of the land and that he had a right to do with it as he saw fit (Rec.,

158, 159). He thinks his final receipt was handed to Mr. Copeland. If so, it was merely for safe keeping and not the request of Copeland, Martin or Alexander.

CHARLES W. DAVIS testified:

That he made the entry because he expected to be benefited by it in that the land was worth more than he paid for it; that there had been no agreement or contract prior to his getting his final receipt about the sale of the timber or any part of the land. No conversation on the subject. He thought of this when he was asked the question in the land office in Camden, knew he had not done it, and answered in the affirmative. As far as any contract was concerned, directly or indirectly, he was at liberty to sell the timber to anybody else, and if anybody else had offered him more he would have taken it and paid off the loan. He expected to sell the timber and pay the loan, but he had no particular party in view that he expected to sell to. The Wooden Gutter Company had land near this and he thought he could sell it to someone and realize the benefit of it. Never settled on any particular party (Rec., 169, 170).

The court cannot read the testimony of this witness and question the perfect candor and truth of every statement he made.

R. C. GREGORY testified:

That he made his entry because he thought he could borrow the money, make an honest investment

that would pay him some money. He kept his final receipt until he sent it to Camden to get his patent. Up to the time he signed the timber contract he had made no contract with reference to the land. "This is the only contract or shadow of one that ever existed between me and anyone." That is the only thing that ever came up in the way of a proposition. He thought the land was his to do as he pleased with it, and would have sold it to the man that offered him the most money (Rec., 181, 182). At the time he made his entry he gave no particular thought as to how he would pay his loan (Rec., 184).

MARY A DAVIS testified:

J. P. Copeland told her she could borrow the money to make the entry. He did not tell her from whom she could borrow it. She thought she could sell the timber and pay the loan; but did not know at the time to whom she would sell. The only reason she had for entering the land was that she thought it would be a good investment for her. She had not made any promise or agreement of any kind prior to signing the timber contract (Rec., 189, 190).

ARCHIBALD G. WINSLOW testified:

Heard general conversation about the town and saw notice in the paper. Later went to Copeland and asked him for information (Rec., 194). Told him he could borrow the money but did not tell him from whom (Rec., 196). Prior to getting his final receipt

he had made no contract about the timber and there had been no talk about it. He still owns the land and pays taxes on it (Rec., 205). He expected to sell the timber and pay his loan. Had no expectation as to whom he would sell to, but he would sell for the best price he could get (Rec., 206).

WILLIAM F. WAITS testified:

That he took up the land because he was a poor man, had to work hard, thought the land was worth more than he paid for it, and that he could make something out of it. That he made the entry on his own motion, and acting for himself alone in the matter. He made no agreement or promise of any kind for a sale of the land or timber before he signed the timber contract, and would have sold it to the man that gave him the most for it. "Uncle Jim Copeland had entered land and I thought he knew right smart about it. We all went to Uncle Jim for advice. I did and others did, too" (Rec., 220).

LAWRENCE C. HORNE testified:

That he entered the land on his own motion because he thought there was profit in it. Until he signed the timber contract nothing had been said to him about giving a contract to any one for the timber or entering it for the benefit of the Martin-Alexander Lumber Company. There had been no reference to anything of that kind (Rec., p. 225).

JAMES F. PATTERSON testified:

Talked with Mr. Copeland. Told him would take up land if money could be gotten. He said he thought he could get the money, and nothing more definite was said. He sold the land to Mr. Elrod, of Pike City (Rec., p. 230). If he had not thought that the land was worth more than he paid for it he would not have bought it (Rec., p. 231). He made the entry for himself alone. He was under no obligation to anyone else. No one else was interested with him. He had made no contract, promise or agreement with reference to entering that land with the Martin-Alexander Lumber Company or to give them the timber on it. Nothing was ever said to him with reference to it; he was under no obligation to anybody, and was free to sell the timber to anybody he wanted to (Rec., p. 232).

CHARLES W. FULLER testified:

The matter was first brought to his attention by people in general taking up the land. When he went to look at the land he had made no arrangements for money, and Emmet Keebaugh told him that he would see that the money was furnished. He never spoke to Mr. Copeland about it or anybody else except Keebaugh (Rec., pp. 234, 235). Up to the time he got his final receipt he never had any other conversation about the matter, never made any promise, contract or agreement of any kind with anybody with reference to

the land, was under obligations to nobody about it, and there was no one interested in the matter but himself. He would have felt entirely free to make a contract with anybody else who would have paid him more for it (Rec., p. 238).

HENRY M. LINTZ testified:

Is a surveyor and selected his own land (Rec., p. 240). He never made any contract or agreement to sell the timber prior to the time he gave the timber contract. There had been no discussion of the matter. He was under no obligation, but at liberty to sell to whoever he pleased. He would have given he Martin-Alexander Lumber Company the preference at the same price, but certainly would have sold to somebody else at a better price, and they would have had no reason to complain (Rec., pp. 246, 247).

SEYBOURN Z. MORAN testified:

The statement contained in his application and proof before the register was true, literally and absolutely and without reservation. He had made no contract with respect to the land and no one else was interested in it except himself. The land was his, no one else had any claim on it, or interest in it, or in the timber on it (Rec., pp. 263, 264).

BILL DORSEY testified:

After he and Moran got their final receipts Alexader asked them to sign a note at Moran's house. He said he wanted some evidence of the debt. That the

parties could sell the land to anybody they wanted. He entered the land for his own benefit. Had made no promise, contract or agreement to sell it or any part of it or timber on it to anybody, and never did until he sold it to Brunson. He had not directly or indirectly made any agreement or contract by which the title was to inure in whole or in part to any person except himself (Rec., pp. 288, 289).

E. A. SHICKER, register of the land office at Camden, corrobates Copeland with respect to his visit to the land office, his inquiry as to the timber and stone act, and his apparent wish to be informed as to the law.

The evidence discloses about this state of case. A mill company being interested in having adjacent timber lands put on the market loaned to different persons the moneys necessary to enter them. The loans were made upon the faith of representations that the borrowers were honest and reliable and would acquire lands worth more than the loans. The entrymen were largely engaged in farming, but during the dull times on the farm worked for the mill company. The defendant Copeland, who was a preacher, a real estate agent and a farmer, who had held many elective offices of trust and confidence, and was the citizen of the county to whom the people, generally, looked for advice and guidance, but who was at the same time in the employ of the mill company aided the entrymen to make their

entries. Nothing was said to the entrymen, before perfecting their entries, by Copeland or anyone else, about selling the land entered, or any interest in it, or the timber on it, to the mill company. After the entries were perfected Copeland offered, for the mill company, to buy the timber on the land, at the ruling price, and the entrymen, except three, accepted the offer, the amount paid being sufficient in all cases to pay the loans, and in some cases more than sufficient. Prior to the times when such offers were made and accepted, no entrymen had made any promise, contract or agreement on the subject, nothing had been said about it, but each felt that he was the sole owner of the land entered by him, to do with as he pleased, and that he was entirely free to sell the timber to the mill company or to any other person as he saw fit.

Upon this state of case it is insisted by the government, (1) that there was an agreement between each of the entrymen and the mill company, made before the entries, that the entrymen would sell to the mill company the timber standing on their land; or (2) that the several entries were made upon speculation, and not in good faith to appropriate the land to the exclusive use and benefit of the entrymen.

If any of the witnesses are to be believed, the position taken is unfounded in fact; if none of them can be believed, the case of the government must fail for want of proof.

When the testimony is analyzed it will appear that there are but four facts relied on to establish the charges made.

1. That the mill company loaned the money to defray the expenses and pay for the land.

2. That Copeland rendered aid to the entrymen in perfecting their entries.

3. That the entrymen soon after perfecting their entries executed timber contracts to the mill company; and

4. That the entrymen were in the employ of the mill company.

If these facts stood alone, without explanation, they might excite suspicion, but neither of them, nor all of them, furnishes adequate legal proof of the charge made.

The loans tend to prove that the mill company wished to see the entries made. But the law permitted them to be made, and the parties who made them had the right to do it. There is nothing in the wish to indicate that the mill company preferred illegal to legal entries, and since they could be made according to law or contrary to law, there is a wise and charitable presumption that the latter was intended.

U. S. v. Budd, 144 U. S., 154, 163.

But the interest of the company points to the same conclusion. The loans were made upon the faith of the borrowers' integrity and the adequacy of the in-

vestment as security for the loan. If they respected the law, their loans were secured, and the lands would get upon the market. But if they violated the law, the entrymen subjected themselves to prosecution for perjury or fraud and their money and land were forfeited to the government. So the mill company would lose the moneys loaned, and the lands would not get on the market. This fact was well understood by Copeland, Martin and Alexander, before a loan was made, and self-interest if not honesty, would have dissuaded them from a course that meant a loss of money and failure to get the land on the market. The open, public and notorious method of doing the business shows that they were not hoping to cover their acts and the charges made are inconsistent with their ordinary intelligence or integrity.

The fact that Copeland assisted the parties indicates no unlawful design to benefit the mill company. He had rendered similar services to his neighbors in making entries for years, and the people looked to him in such matters. In these transactions he had the double incentive, to serve his neighbors and his employer. The basis of the credit in the loans made was the value of the land entered and the integrity of the entrymen. Regular entries were therfore essential to the interest of the borrower and the lender, and Copeland served both when he assisted the entrymen.

Legal sales of the timber subsequent to the entries

do not prove prior illegal contracts to sell. And haste of the mill company to procure contracts after the entries, would imply that they did not have them before. If the matter was already understood, why hurry to get a contract? It cannot be said that the company was seeking valid contracts for those that were invalid, because upon the assumption of the government no contract could be gotten that the mill company could afford to assert.

The fact that the entrymen consented to sell their timber does not prove a prior corrupt purpose, agreement or understanding. They sold the timber at the ruling price, for enough, or more than enough, to pay what they had borrowed, and they had clear the proceeds of the surplus timber, and the land. That they were willing to relieve themselves of their debts by a sale of the timber at its usual market price, in order that they might hold the land and enjoy the surplus proceeds of the timber, argues nothing wrong. And the fact that they made a sale when they could legally deal upon the subject, is no proof that they had a prior understanding about it, when the law prohibited it and they could not do it without committing the crimes of fraud and perjury, and forfeiting their money and claim to the land.

The fact that most of the entrymen were in the employ of the mill company at some time, signifies nothing. Some of them were not in its employ at all,

and most of them were so only during the dull seasons on their farms. Few of them depended upon the mill company for employment or support. Most of them engaged regularly in farming. That was their occupation and means of livelihood, while their employment at the mill was occasional and incidental only. They were not dependents of the company. Such men as Stephen A. Fuller, Davis, Lintz and Gregory are subservient to the commands of no employer, except in proper line of employment, and a reading of their testimony will satisfy this court that they acted as free men, in their own interest, and did the bidding of no one. They were in the employ of the mill company as almost every industrious farmer in that country was, but they were independent, self-reliant, free men, with no obligation to it outside the lines of their respective employments, and nothing to induce them to embark on a scheme of perjury and fraud to promote its interests.

So, we submit that the ultimate facts made out of the multitude of details and circumstances in proof, do not establish the charge made.

And we submit further that the charge is disproven.

First. By its inherent improbability and unreasonableness; and

Second. By the direct, positive and uncontradicted testimony of witnesses who knew what the facts were, and so detailed them as to disprove the charge.

1. The charge contains such inherent improbability and is so unreasonable that it cannot be credited without more proof than is furnished by the suspicious circumstances arrayed by the learned attorneys for the government.

It should be remembered that Martin, Alexander and Copeland were men of intelligence, who knew the law, and, that it forbade any agreements being made before the lands were entered, directly or indirectly, in any way or manner. They further knew that a part of the penalty, for violating the law was a forfeiture of the land. And a forfeiture of the land meant a loss of the money loaned, since the borrowers were recommended as honest but poor, and it further meant that the lands would not go upon the market, which was the alleged motive of the mill company. Is it reasonable or probable, that sensible men, actuated by the motive alleged, would adopt a course so foolish? If they did, their dishonesty is far exceeded by their stupidity.

If they respected the law, they might reasonably expect all their alleged plans to work out. The lands when entered would exceed in value the loans, and were subject to the debts. As the owners were honest they would pay the loans if they sold their land. If they did not sell, the lands would be subjected by legal process. In either event, the lands would become subject to sale on the market, and the relative situation

of the mill and the lands made it extremely probable that the mill company could acquire them sooner or later. If they violated the law the money was gone, no title to the lands would be acquired and no security would be obtained, and the lands would not go on the market. Such a course can be explained only on the theory that its authors were idiots or irresistibly bent upon crime.

The alleged course appears the more unreasonable since its assumes the willing, servile and unresisting participation in fraud and perjury of every entryman, including old Stephen Fuller, Davis, Lintz and others, whose language, though it is communicated to this court in cold type only, leaves no doubt of their honesty, truth and perfect candor. They are representatives of primitive conditions in society, rude perhaps, simple-hearted and improvident; but truthful, honest and self-respecting, who care too little for gain to countenance or practice wrong-dealing.

2. But the court is not called to determine the issue raised by the contention of the government, upon consideration of what may be deemed reasonable or probable.

The government produced, at the trial of the indictment against Copeland, Alexander and Martin, nearly all the entrymen. They testified fully, freely and without apparent reserve. They detailed the conversations between them and the parties named; stated

what their understadings and agreements were, what promises were made, and when they were made; what they did and why they did it; and by the testimony of each and every one of them, the alleged agreements and understandings were never made, the entries were made for the sole and exclusive benefit of the entrymen; they were under no obligation to the Martin-Alexander Lumber Company to sell it the land or timber, but felt free to sell to whom they pleased. This testimony, taken in open court, was reduced to writing, and by consent of counsel used in the trial of this case.

The learned judge who tried this cause in the circuit court heard the witnesses, saw what manner of men they were and how they conducted themselves, and his subsequent finding in this case was, that there was no violation of the law.

U. S. v. Detroit Timber and Lumber Co., 124 Fed., 393.

Under such circumstances his finding is entitled to great respect. There is certainly no judge of any court to whom fraud is more offensive, or who would more cheerfully apprehend its authors and take from them its ill-gained fruits. Nothing but a clear conviction that there was no fraud could ever bring him to the conclusion reached in this case. It is not a case in which he would readily decide for the defendant on the ground of evenly balanced doubts, or a failure to prove with sufficient directness a fact that he believed existed.

But if he had believed that the transactions were fraudulent he would have taken extreme delight in unmasking them, and tearing away any cloak by which it was sought to cover them. A hearing of the witesses, seeing them, coming to know what manner of men they were, satisfied him that there was no wrong, and his finding is sustained by the testimony of every witness who professed to know and detail the facts.

Every entryman examined said that he made no promise, contract or agreement until after he got his final receipt. That nothing was said on the subject. That he made the entry for himself only, because he thought the land was worth more than he paid for it. That he felt free to sell it, and would have sold it, to the person offering the most. And that he felt that he could have sold it to any other without violating any obligation to the Martin-Alexander Lumber Company. Moran and Dorsey, who seemed quite hostile to Martin, Alexander and Copeland, and who seemed to be the main reliance of the government, did not sustain the charges made, but on the contrary disproved everyone of them, so far as they knew, or were concerned. They not only denied any contract, agreement or understanding, directly or indirectly, but had declined to sell the timber to the company and later sold their land to another person.

So far as the entries of Moran and Dorsey are concerned, the proof shows there was no agreement to sell,

and that there was no sale to the company. Unless allegations outweigh counterproof, there can be nothing in the attack on them.

Old man Lintz and his wife still hold their land, though they sold the timber. This court cannot read his testimony and believe the charges of fraud made against him.

Old man Stephen Fuller has sold his timber and land and perhaps has little pecuniary interest in the case. But his good faith is the abundant protection to his vendee. We invite the court's attention, particularly, to the testimony of this unsophisticated, illiterate, good-natured, simple-hearted, honest old man. When fraud is found in his acts or falsehood in his words, men will gather figs on thorns and grapes on thistles. We might go over the list of the entrymen in the same way, but there would be but one result. Their testimony seems candid, truthful, unreserved, and convincing, and it all leads to the same conclusion, that the charge of the government is not sustained.

3. It is argued that if the entries were not made for the benefit of the Martin-Alexander Lumber Company, they were made for the purpose of speculation. What is intended by an entry "for the purpose of speculation" is not distinctly developed. If it is one made in the hope of selling at a profit the position is no doubt well taken and the entries are perfectly legiti-

mate. If it means more, there is no evidence to warrant it.

Each entryman who testified on the subject said that he expected to realize a profit by a sale of the land or timber, or both; but that he had no definite idea of when or how he would sell, and did not know, or have any defined purpose, as to who he would sell to. Lintz said he knew what the mill company was paying for timber, and supposed that he could sell to it at the prevailing price, though he had no intention of doing so, but intended to sell where he could get the most when the time came to make a sale. The others say that they never thought about when they would sell, or who they would sell to. The state of mind of the entrymen is well illustrated by the testimony of Gregory:

"Q. Was there any other way to pay it (his note)

"A. Not within six months.

"Q. If the note was within six months?

"A. I believe if it came to a showdown I could have borrowed the money over from other parties to pay that money off entirely, different from that company.

"Q. Did you expect to do that?

"A. No sir; I didn't expect to have to do anything of that kind.

"Q. Did you have any idea of how you were to pay that note at the time you executed it?

"A. I never gave that any particular thought. When I made a proposition that had been accepted, I thought that was all right.

"Q. You made a note for four hundred and some odd dollars, and your wife also made one for some four hundred dollars?

"A. I don't believe hers cost as much as mine, quite, because she only took one hundred and twenty acres.

"Q. Hers was three hundred and something?

"A. I don't remember whether it was or not.

"Q. Then, whatever it might have been, these two sums of money you had to pay?

"A. She and I together, because I had made out those notes, because I, being the head of the family, took it upon myself to consider the whole thing as one.

"Q. At the time you made them, or that they were made, you didn't know how they were to be met when they matured?

"A. No, sir; I didn't think that I would have to meet them at maturity, but I think I could have paid them off if it had been a plain case of showdown, and I couldn't have disposed of any of my timber. I believe I could have met them. I have not any particular assurance that I could have met them, but I believe I could" (Rec., p. 184).

This may indicate improvidence and loose business methods, but it does not show any purpose to enter land for the benefit of anyone else. And it should be remembered, that, while these entrymen were plain, honest, straightforward men, who knew right in the ordinary affairs of life and do it, they were not examples of thrift or strict business methods, and naturally took no concern for the money.

Buying for sale at a profit, could not have been what the act meant by speculation. As it applies only to land valuable for timber or stone, the entrymen could derive no benefit from the land except by selling it. Only a mill man could make the entry for the purpose of using the timber, and it would not be contended that the benefits of the act were intended to be confined to them. So that the act will not bear that construction.

It must be conceded that the meaning of the word "speculation" is not obvious. If its ordinary meaning were given it, the purpose of the act would be defeated, and therefore that cannot be the meaning intended. Looking to the context, the latter half of the same clause and the clause following, fairly clear up the obscurity.

This clause negatives the purposes of speculation in making the application. The applicant asserts that he does not apply to purchase on speculation. That is, he does not intend to speculate on the privileges

acquired by the application; but to complete the entry and acquire the land for the benefit to result to him by reason of owning it. This is the interpretation given the same language, in an analogous statute, by the supreme court.

Myers v. Croft, 13 Wall., 294.

The negative is, "that he does not apply to purchase the same on specuation," the affirmative, "but in good faith to appropriate it to his own exclusive use and benefit." The affirmative is the antithesis of the negative, and aids to bring out its meaning. In this light the term "on speculation" appears to signify an application on behalf of or for the benefit of another, as contradistinguished from one for the use and benefit of the applicant.

If the construction for which we contend be accepted the clause under discussion prevents an application by a dummy or automaton, for or in behalf of some other person; while the next succeeding clause prevents one who applies on his own behalf, from making any kind of agreement or contract by which the title he may acquire shall inure to the benefit of another before the entry is perfected. The former forbids the applicant to lend his name to the real entryman; while the latter forbids the applicant, who applies in his own behalf, from transferring his claim before

the entry is complete. This construction effects the purpose of the act, which was to make it certain that the land should belong exclusively to the applicant when the entry was completed; and it does not prevent such an entryman from making a sale immediately after the entry and thereby acquiring the only benefit possible to him.

The Secretary of the Interior, in "Annie M. Donahue and Fourteen Others," Mss. Op., delivered December 10, 1903, has the following to say with respect to the meaning of this clause:

"What does the statute intend by the words 'on speculation?' Bouvier's Law Dictionary, 1876 and 1897, defines speculation as 'the hope and desire of making a profit by the purchase and resale of a thing.' Anderson's Law Dictionary, 1893, gives: Speculation. Gambling is not to be confounded with speculation. Merchants speculate upon the future price of that in which they deal, buy and sell accordingly. In other words, they think of and weigh, that is speculate upon the probabilities of the coming market and act upon this outlook into the future.

"Neither of these is properly a definition. The first merely indicates the motive that induces to purchase of a thing as a speculation, the other is a mere thesis upon the distinction between a speculative contract of purchase and a gambling or wagering contract.

"Worcester's Dictionary of 1880 defines speculation as:

" 'The act of paying out money, or incurring extensive risks with view to more than usual success in trade.' A. Smith.

"The Century Dictionary defines it:

" '4. The investing of money at a risk of loss on the chance of unusual gain; specifically, buying and selling, not in the ordinary course of commerce for the continuous marketing commodities, but to hold in expectation of selling at a profit upon a change in values or market rates.'

" 'Speculate. To invest money for profit upon an uncertainty; take the risk of loss in view of possible gain; make a purchase or purchases, as of something liable to sudden fluctuations in price or to rapid deterioration on the chance of selling at a larger advance.

" 'Investment. Expenditure for profit or future benefit, a placing or conversion of capital in a way intended to secure income or profit from its employment; as an investment in active business, or in stocks, land, or the like.'

"Webster's International Dictionary of 1896 and 1903, somewhat changing the definition of the Unabridged Dictionary of 1887, defines speculation

" '(Com.) The act or practice of buying land, goods, shares, etc., in expectation of selling at a higher price, or of selling with the expectation of repurchasing

at a lower price, a trading on anticipated fluctuations in price, as distinguished from trading in which profit expected is the difference between the retail and wholesale price, or the difference of price in different markets.

" 'Any business venture involving unusual risks, with a chance for large profit.'

"In all the definitions there is more or less prominent, persistent and common, the elements of sudden fluctuations in value, liability of loss by depreciation, and contemplated brevity of time before reconversion and liquidation of the subject-matter.

"Still the definitions do not clearly indicate what congress intended to inhibit under the term speculation. Following the familiar rule of statutory construction, to seek in the act itself the meaning of particular words by study of the context, it seems, that the words immediately following 'speculation' explain and define its meaning. If that be accepted, then its meaning is that all the benefit of the title sought to be acquired is in good faith intended to be for the entryman himself, and that there is no intent or contract that it shall inure to any other person, analogous to the requirements in other public land legislation under the settlement laws.

"There is nothing in the act—other than the word speculation itself—in any way indicating that Congress intended that no one should make such entries except

lumber or timber dealers, or those intending themselves to cut and market the timber. If it was intended to so limit these entries it is obvious that more apt words might have been chosen. If it is not to be so limited, it is an absurdity to prohibit or forfeit an entry because the entryman contemplated profiting by sale of the land. He would not make the entry and pay money except from a motive in some way to profit himself, and if he does not intend himself to cut or market the timber and is by statute required to so intend, he perforce must intend to profit in the only way possible —namely, by a sale. This is the construction given to the act by the supreme court and by the department heretofore. In United States v. Budd, 144 U. S., 154, 163, the court says:

"'* * * All that it (the statute) denounces is a prior agreement, the acting for another in the purchase. If when the title passes from the government no one save the purchaser has any claim upon it, or any contract or agreement for it, the act is satisfied. Montgomery might rightfully go ahead and send into that vicinity and make known generally, or to individuals, a willingness to buy timber land at a price in excess of that which it cost to obtain it from the government; and any person knowing of that offer might rightfully go to the land office and make application and purchase the tract from the government.'"

But the supreme court left nothing uncertain or

in doubt as to the purpose or meaning of the act, after its decision in U. S. v. Budd, 144 U. S., 154, 163, as is shown by the language quoted above.

That case also restates very clearly the rule which exacts clear, unequivocal and convincing proof in this class of cases.

"Only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful."

Id., 161, 162.

See, also,

U. S. v. Clark, 125 Fed. Rep., 774.

Counsel have placed great reliance upon the case of United States v. Bailey, 17 L. D., 468. But that case is modified by a later decision in the Donahue case, and in some of its most important rulings is in direct conflict with the decision of the supreme court in the Budd case.

Reliance is also placed on Hawley v. Diller, 178 U. S., 476. But that case decides nothing against us. Entries were attacked before the department, before patents issued for fraud. The department found that they were fraudulent in fact. The supreme court held that this finding was conclusive upon the courts.

Id., 495.

II.

THE DETROIT TIMBER AND LUMBER COMPANY WAS AN INNOCENT PURCHASER FOR VALUE OF THE LANDS IN CONTROVERSY.

This question was so fully and so ably discussed by the circuit court of appeals in its discussion in this case that there is very little that can be added by us. But we feel that it might be of some assistance to court to present the facts as we understand them from the record, and present the authorities in support of our contention, and of the judgment of the circuit court of appeals.

It is not charged by the appellant that the Detroit Timber and Lumber Company in any manner participated in any of the fraud alleged in the bill against the entrymen or against Martin-Alexander Lumber Company, but it is alleged "that on the 14th day of January, 1901, the said Martin-Alexander Lumber Company sold, assigned and transferred to defendant, Detroit Timber and Lumber Company, all said timber, contracts and leases for the timber on said lands, and that before and at the time of such sale, assignment and transfer, the said Detroit Timber and Lumber Company had full and complete knowledge of all the fraudulent acts of the said Martin, Alexander and Copeland in procuring said entries to be made as hereinbefore alleged; of the fraudulent agreements between

said Martin, Alexander and Copeland and the said entrymen as hereinbefore alleged, and had full and complete knowledge that the affidavits of each and every of said entrymen in making said entries was false, and that said entries had been made for the use and benefit of the said Martin-Alexander Lumber Company" (Rec., p. 10).

In answer to this allegation of the appellant the Detroit Timber and Lumber Company says:

"This defendant admits that on the 14th day of January, 1901, the Martin-Alexander Lumber Company sold, assigned and transferred its entire property, and all debts due it, to the Detroit Timber and Lumber Company, and that by said sale, this defendant became the owner of all the subsisting timber contracts and leases for timber on said lands, theretofore made with, and held by, the said Martin-Alexander Lumber Company, and by reason thereof acquired the title to such timber as was then standing on said lands covered by said contracts" (Rec., p. 23).

It denies all knowledge of any fraudulent acts on the part of Alexander and Copeland, and alleges "that on said 14th day of January, 1901, it purchased from the Martin-Alexander Lumber Company, all of its real and personal property, and debts due it, including the timber on the lands in question, in good faith, for the consideration of sixty thousand dollars ($60,000.00); that said purchase of said property and the payment

of the purchase price therefor, were made in good faith and without any fraud or intent on the part of this defendant to defraud the said plaintiff, and without any knowledge, information or belief that the said lands or any part of them, had been irregularly, illegally or fraudulently entered and purchased, as alleged in the said complaint." It also alleges "that all of the patents to said entrymen had been issued long before it had any notice of any claim of the plaintiff that there was such irregularity, illegality and fraud. Therefore this defendant insists that it is an innocent, bona fide purchaser of said timber, for a valuable consideration, without notice of any illegality or fraud, if any ever existed, and that it would be contrary to law and equity to sustain this action." (Owing to error in printed record the last two lines on page 24 and the whole of page 25 has been misplaced. The last two lines on page 24 should follow the word "but" near the bottom of page 23.)

We do not think there will be any material dispute as to the facts connected with this transaction; the only question will be as to the legal effect of the acts of the Detroit Timber and Lumber Company. In order that we may fully understand the position of this company, we will briefly go over the facts in the case as applying to the Detroit Timber and Lumber Company.

In December, 1900, the Detroit Timber and Lumber Company had an office in the city of St. Louis. U. L. Clark its president, was in charge of its affairs. Sometime between the 15th and 22d of that month Alexander, of the Martin-Alexander Lumber Company, called at the office of the Detroit Timber and Lumber Company and stated to Clark that the Martin-Alexander Lumber Company had mill property, a lot of lands and timber in Pike county, that it desired to sell. So far as the record shows, this is the first time the Detroit Timber and Lumber Company knew anything about the property in controversy. After talking the matter over it was agreed that Clark would send their timber inspector, McDonald, down to Pike City to investigate the nature and character of the property owned by the Martin-Alexander Lumber Company.

In pursuance of that arrangement, McDonald left about the 24th of that month, arriving at Pike City on December 25, and began to make an investigation of the property. Clark, about January 9, after having bad reports from McDonald regarding the property, went to Pike City himself to make personal investigation. It must be remembered at this point that the Martin-Alexander Lumber Company had large holdings outside of the lands in controversy, which were included in the purchase made by the Detroit Timber and Lumber Company. After Clark arrived at Pike City he went over the reports made by McDonald,

and figured up the property owned by the Martin-Alexander Lumber Company, and finally made them an offer of sixty thousand dollars ($60,000.00) for their holdings. Martin's interest in the company upon that basis figured out thirty-five thousand dollars ($35,000.00), while that of Alexander amounted to twenty-five thousand dollars ($25,000.00).

Alexander had stated to Clark that he would sell his interest in the company upon the same terms that Martin sold his, Clark, on behalf of his company, refusing to purchase either interest unless he could get it all. After the terms of the trade had been agreed upon, Clark, on behalf of his company, gave to Martin a check for $27,456.79, and also endorsed to him a note of the Bodcaw Lumber Company for $25,000.00. This amount paid Martin included an indebtedness of Martin-Alexander Lumber Company to him for $17,456.79 that company owed him on account, making the total paid Martin $52,456.79.

After the transaction had been arranged to the satisfaction of Martin, Alexander stated that he would prefer stock in the Detroit Timber and Lumber Company to the cash for the amount due him. It was finally agreed between Clark and Alexander that he should be paid in that way, provided Clark's associates in the Detroit Timber and Lumber Company would agree to it, but that if they agreed to it, he would have to wait until the necessary legal steps could be taken under

the laws of the State of Michigan to increase the capital stock of the Detroit Timber and Lumber Company, so as to absorb by the issue of additional stock its surplus, which was, the cost of the Martin-Alexander Lumber Company plant and property, and perhaps additional stock.

In order to wind up the affairs of the Martin-Alexander Lumber Company and to make a final transfer of the property, Martin resigned as president of the company and Clark was elected in his place. The testimony of Clark is clear upon the proposition that in making the purchase he was acting for the Detroit Timber and Lumber Company, and that he only took the position with the Martin-Alexander Lumber Company for the purposes above stated. The deal was practically consummated on the 14th day of January, 1901; all the timber deeds and other deeds held by the Martin-Alexander Lumber Company were turned over to Clark on that day for the Detroit Timber and Lumber Company. Afterwards, on the 22d day of April, 1901, stock of the Detroit Timber and Lumber Company to the amount of $25,000.00 was issued to Alexander in payment of his interest in the Martin-Alexander Lumber Company. This included the stock his wife held in that company, which was controlled by him. The purchase of the interest of Martin also included that of J. O. Means, so that by this purchase and the payment of the $60,000.00 as above stated, the

Detroit Timber and Lumber Company became the owner of all the assets of the Martin-Alexander Lumber Company. As stated above, this method was adopted by Clark, not for the purpose of having the Detroit Timber and Lumber Company or himself become a stockholder in the Martin-Alexander Lumber Company, but for the purpose of securing to the Detroit Timber and Lumber Company, all of the assets of the Martin-Alexander Lumber Company. In other words, it was a purchase by the Detroit Timber and Lumber Company of all the assets of the Martin-Alexander Lumber Company.

It is alleged in the bill, as above stated, that the Detroit Timber and Lumber Company did, on the 14th day of January, 1901, become the purchaser of the assets of the Martin-Alexander Lumber Company, and not denied in the answer. It therefore stands admitted by the pleadings here that on that day the Detroit Timber and Lumber Company became the purchaser of the assets and property of the Martin-Alexander Lumber Company, including all timber contracts held by it on the lands in controversy. At this time thirteen of the entrymen had procured patents to their lands. (See section 10 of bill on pages 9 and 10.)

On the 14th day of March, 1901, a formal conveyance was made by the Martin-Alexander Lumber Company to the Detroit Timber and Lumber Company of all

timber contracts held by it for timber on lands in Pike County, Arkansas, and for all lands in Pike County, Arkansas, "including lands from which timber had been cut off as well as its uncut lands, deeds for which were turned over January 4, last." It will be remembered that the testimony shows that deeds for all of these lands had been turned over on that date.

Afterwards, the Detroit Timber and Lumber Company concluded to, and did, purchase the fee simple title to certain of these lands from the entrymen, a list of which will be found in the stipulation on page 34 of the record. In addition thereto, it purchased the lands of S. Z. Moran and wife and William Dorsey. These parties had conveyed their lands to D. D. Brunson, who afterwards conveyed them to the Detroit Timber and Lumber Company. The company also purchased from Emma Lintz and Henry M. Lintz all the timber standing on the lands owned by them, and took regular deeds of conveyance therefor. The dates of these conveyances and the dates that the patents were issued to the parties will be found on page 78 of the printed record, except that by misprint of the clerk the name of Robert J. Hughes is omitted from this last list. In each case a valuable consideration was paid for the lands and deeds conveying the fee simple title taken, except in the case of the Lintzes, where the deed was given for the timber upon the land. The timber contracts held by the Martin-Alexander Lumber Company

were conveyances of all the timber standing upon the land of the respective entrymen, so that by the purchase from that company by the Detroit Timber and Lumber Company, on January 14, 1901, it acquired all the timber upon these lands, and by the purchase from the entrymen as above stated, it acquired the fee simple title to the land.

There was no testimony of any kind to show that the Detroit Timber and Lumber Company had any knowledge of any irregularity in the entries until in October, 1901, after the last purchase had been made by it, and until long after it completed its purchase from the Martin-Alexander Lumber Company. The first intimation that there was anything wrong in regard to these lands was after the visit of Agent Schlierholz, which, as shown by the record, was about October 4, 1901. Clark's testimony is to the effect that that is the first intimation he had on the subject and there is nothing to controvert it. At this time all of the purchases had been made, the consideration paid and the deeds executed and delivered, and the Detroit Timber and Lumber Company was in full possession of the property.

1. The first point relied upon by the appellant before the circuit court of appeals was substantially that Clark made no investigation of the title to the lands purchased; that if he had investigated he would have found that they were entered under the Timber

and Stone Act, and that if he had compared the dates of the final certificates with the dates of the timber contracts held by Martin-Alexander Lumber Company he must have been convinced that they were made for the benefit of the Martin Alexander Lumber Company, or that they were made on speculation. In stating this proposition, counsel abandon the allegations of their bill to the effect that the Detroit Timber and Lumber Company purchased the lands from the Martin-Alexander Lumber Company on the 14th day of January, 1901, and attempt to limit the transaction on that date to the purchase of the stock of E. B. Martin and Means by U. L. Clark. We insist that they cannot go outside of the issues made by the pleadings. Nothing else is before the court.

But to the question: Where it is sought to charge a purchaser for value with *mala fides*, as in this case, the burden is upon the complainant to show, either actual knowledge of the fraud, or knowledge of some fact, that would make it his duty to inquire, and his failure to do so an act of gross or culpable negligence.

In Townsend v. Little, U. S., 504 (Book 27 L. Ed., p. 1014), the Supreme Court of the United States says:

"As said by Strong J. in Meehon v. Williams, 48 Pa., 238, what makes inquiry a duty is such a visible state of things as is inconsistent with a perfect right in him who proposes to sell."

In Wilson v. Wall, 73 U. S., 83 (Book 18 L. Ed., p. 730), the court says:

"A chancellor will not be astute to charge a constructive trust upon one who has acted honestly and paid full and fair consideration without notice or knowledge. On this point we need only to refer to Sugden v. Vendors, p. 782, where he says: 'In Ware v. Lord Egmont, 4 De Gex. M. & G., 460, the Lord Chancellor Cranworth expressed his entire concurrence in what, on many occasions of late years, had fallen from judges of great eminence on the subject of constructive notice, namely, that it was highly inexpedient for courts of equity to extend the doctrine. When a person has not actual notice he ought not to be treated as if he had notice unless the circumstances are such as enable the court to say, not only that he might have acquired, but also that he ought to have acquired it but for his gross negligence in the conduct of the business in question. The question, then, when it is sought to affect a purchaser with constructive notice, is not whether he had the means of obtaining and might by prudent caution have obtained the knowledge in question, but whether not obtaining was an act of gross or culpable negligence."

The facts in the case last cited were that a patent had been issued to a Choctaw Indian for lands in Alabama under the 14th article of the treaty of September 17, 1830, which provided that the head of

each Choctaw family desiring to become a citizen of the State should be entitled to one section of land and to one-half section for each unmarried child over ten years of age and a quarter section for each child under ten years of age. The patent to William Wall was for three and a half sections of land and designated it as land that had been located by him as his reserve, and the conveyance was to him and his heirs. Wall sold all the land to Wilson and afterwards died. His children then brought suit for the land and alleged that by the death of the father, so much of the land as was his individually descended to them as his heirs, and that the remainder of the land was theirs under the treaty. Wilson set up a defense, that he was a bona fide purchaser, but admitted that he knew Wall was a Choctaw, head of a family, entitled to a reservation under the treaty, but did not know under which article of the treaty he claimed. It is clear, it seems to us, that as to so much of the land as belonged to the children that Wall would hold as a trustee for them, and the able counsel who represented the government in this case would have contended, in that, had they represented the complainants, that as Wilson knew Wall took the land as a head of a Choctaw family under the treaty, that he, Wilson, would have been held to inquire under what section of the treaty he received the patent and also what children he had, and finding children, must

have known the law; that is, that Wall held as a trustee. But the court says:

"The parties to this contract may justly be presumed to have had in view the previous customs and usages with regard to grants to persons 'desirous to become citizens.' * * * But it does not follow that they were acquainted with the doctrine of trusts."

In the case of Williams v. Jackson, 107 U. S., 478, by a trust deed duly recorded land was conveyed to the trustees in fee and they were authorized to release deed to the grantor upon the payment of a negotiable promissory note thereby secured. Before that note was paid or payable, and after it had been negotiated to an endorsee in good faith for full value, a deed of release, reciting that it had been paid, was made to the grantor by the trustees and by the payee of the note and recorded; and the grantor executed and delivered a like trust deed to secure the payment of a new note for money lent him by Williams, who had not actual notice that the first note had been negotiated and was unpaid, and who was furnished with a conveyancer's abstract of title showing that the three deeds were recorded and the land free from incumbrance, before he would make the loan. Jackson, the holder of the note secured by the first deed of trust, brought suit to have the deed of release as well as the deed of trust made to secure Williams' note declared void as against the first deed of trust. The courts say:

"It was suggested in the argument that as the first deed of trust showed that the notes secured thereby were negotiable and were not yet payable and that the land was not intended to be released from this trust until all the notes were paid, Williams was negligent in not making further inquiry into the fact whether they were still unpaid. But of whom should he have made inquiry? The trustees under the first deed and the original holder of the notes secured thereby having expressly asserted under their own hands and seals that the notes had been paid, and Sweet and wife having apparently concurred in the assertion by accepting the deed of release and putting it on record, he certainly was not bound to inquire of any of them as to the truth of that fact; and there was no other person to whom he could apply for information, for he did not know that the notes had ever been negotiated, and he had no reason to suppose that they had not been canceled and destroyed.

"To charge Williams with constructive notice of the fact that the notes had not been paid, in the absence of any proof of knowledge, fraud, or gross or willful negligence, on his part, would be inconsistent with the purpose of the registry laws, with the settled principles of equity, and with the convenient transaction of business."

In Devlin on Deeds, Sec. 729, 1st Ed., the rule is laid down as follows:

"The notice must be so clear that the purchaser cannot take and hold the property without fraud."

Citing

Hall v. Livingston, 3 Del. Ch., 348.

See, also,,

Shepherd v. Shepherd, 36 Mich., 173.

"What will amount to this 'reasonable diligence,' and when the purchaser will be affected by constructive notice, will depend on the circumstances of each case. 'It is scarcely possible,' says Vice Chancellor Wigram, ' to declare *a priori,* what shall be deemed constructive notice, because unquestionably that which will not affect one man may be abundantly sufficient to affect another. But I believe I may, with sufficient accuracy for my present purpose, and without danger, assert that cases in which constructive notice has been established resolve themselves into two classes; first, * * * and secondly, where the court has been satisfied, from the evidence before it, that the party charged had designedly abstained from inquiry for the very purpose of avoiding notice. * * * The proposition of law upon which the second class proceeds is, not that the party had incautiously neglected to make inquiries, but that he had designedly abstained from such inquiries for the purpose of avoiding knowledge —a purpose which, if proved, would clearly show that he had suspicion of the truth, and a fraudulent determination not to learn it. If, in short, there is not

actual notice that the property is in some way affected, and no fraudulent turning away from a knowledge of facts which the *res gestae* would suggest to a prudent mind—if mere want of caution, as distinguished from fraudulent and willful blindness, is all that can be imputed to the purchaser, there the doctrine of constructive notice will not apply; there the purchaser will be considered, as in fact he is, a bona fide purchaser without notice.' 1 Hare, 55, cited; 2 White & T. Lead. Cas. Eq. (Hare & W. notes.")

Hardy v. Harbin, 1 Sawyer, 194 (Fed. Cases, 6059).

The case of Hardy v. Harbin was one where the defendant claimed under a patent from the United States, and the court further states:

"The doctrine of constructive notice should not, in my judgment, be extended contrary to the tendency and spirit of the recent decisions to a new class of cases. It is essential to the security and repose of a vast number of fairly acquired titles in this State that the right of the purchaser, who without actual notice, has obtained the legal title from the United States under a patent, should be firmly upheld.'

The cases above cited we think fully sustain the rule as stated by us.

Of what facts did Clark have notice that should have put him upon inquiry? For the purchaser must have actual notice of some fact that makes inquiry necessary.

Mills v. Smith, 8 Wallace, 27.

The burden is upon the government in this case.

"The burden is upon the attacking creditor, but when fraudulent intent on the grantor's part is made out and the circumstances are suspicious, the purchaser must show that he has paid value, and if he does, it must then appear that the purchaser had notice of the fraud."

In the case of Colorado Coal and Iron Company, *et al.* v United States, 123 U. S., 307, the syllabus is as follows:

"The title of such a purchaser (bona fide purchaser for value) rests upon the strongest presumptions of fact, which, although they may be rebutted, nevertheless can be overthrown only by full proofs to the contrary, clear, convincing and unambiguous. The burden of producing these proofs and establishing the conclusion rests upon the government, in an action by it to cancel a patent which it has issued, and it is not relieved of this burden by the negative nature of the proposition it is bound to establish."

Crawford v. Neal, 144 U. S., 585.

Jones v. Simpson, 116 U. S., 609.

It was urged by counsel for appellant before the circuit court of appeals that:

"Mr. Clark must have known that the timber contracts were not good unless the parties who executed them had title to the land." If by "title" they mean a

patent from the United States, we beg leave to differ with them. When the entrymen paid for the land and obtained their final receipts, they had the right to sell.

"The object of Congress was attained when the pre-emptor went, with clean hands, to the land office and proved up his right, and paid the government for his land. Restrictions upon the power of alienation after this would injure the pre-emptor and could serve no important purpose of public policy."

Meyers v. Croft, 13 Wall., 291.

Acting upon this well-known principle, thousands of purchases are made every year from vendors who have no other title than a final certificate.

Clark was informed at the time he made the trade, and it is a fact established fully by the testimony, that at that time all the entrymen had either final receipts or patents to their land. But it was stated in appellant's brief that on the 14th day of January, 1901, thirteen patents had been issued, and that timber contracts had been given on lands for which patents had not been issued; that if Clark had investigated the title to the lands covered by these twenty-eight contracts he would have found that they were entered under the Timber and Stone Act. "That was the only act which authorized the purchase of public lands in Arkansas. He must also have known of the limitations put upon the entry of these lands, to-wit: that they must be entered for the use and benefit of the entrymen and not

on speculation, and that they were not entered for the benefit of any other person. He would also have known that a violation of these requirements would have forfeited to the government the purchase price paid for those lands as well as vacating the entries. The dates of the contracts in his hands following so nearly the dates of the final receipts must have convinced him that these entries were made in violation of those provisions. If he were not convinced that they were made for the benefit of the Martin-Alexander Lumber Company, he must have been convinced that they were made on speculation by the entrymen. In either event he must have known that the entries were fraudulent."

This statement contained the gist of the appellant's contention. Let us therefore examine it carefully and see whether, measured by the well-known principles of equity, it shows a want of good faith on the part of the Detroit Timber and Lumber Company.

In the first place, Clark did not know that the lands had been entered under the Timber and Stone Act. In his cross-examination by the solicitor for the government he was asked:

"Q. Did you know at that time how title to government lands could be acquired in the State of Arkansas?

"A. All I knew about it was under the homestead act; I had known about them for some time.

"Q. Did you understand then that the statements made there in regard to final receipts were made in reference to entries under the homestead act?

"A. I didn't know whether it was or not; I supposed so; I didn't know it" (Rec., p. 396).

"But," says the appellant, "he should have investigated the title." If this is so, he was bound only to investigate the public records. He would then have found that each entryman had complied with the law to its very letter; that patents had been issued to thirteen entrymen and final receipts to the others. The legal presumption would have been that all the necessary steps had been complied with.

Lea v. Polk County Copper Co., 62 U. S., p. 493 (Book 16 L. Ed., 205).

Where a purchaser finds that a patent has been issued he is not required to look behind it.

Bagnell v. Broderick, 13 Pet., 448.

"If a patent from the government be presented, surely a purchaser from the patentee is not derelict, and does not fail in such negligence and care as are required to make him a bona fide purchaser, because he relies upon the determination made by the land officers of the government in executing the patent, and does not institute a personal inquiry into all the interior transactions upon which the patent rested."

United States v. California & Oregon Land Co., 148 U. S., 31 (Book 37, L. Ed., p. 361).

In United States v. Minor, 29 Fed., p. 134, the court says:

"The patent could only be assailed by matters resting in parol *dehors* the record. Innocent parties were entitled to rely upon the record."

But it was contended that if Clark had examined the dates of the final receipts and of the timber contracts he must have been convinced that the entries were made in violation of the law.

The nearness of the dates is the only fact appellant claimed or asserted would have been brought to Clark's attention by an examination of the papers before him. At most, this could have only been an inference. It is not a fact that would have attracted the attention of the ordinary business man, and in all probability might have escaped the attention of the most careful lawyer unless he had theretofore scented fraud and been on the search for it. It did not necessarily follow that because shortly after the final receipts had been issued, that the entrymen had sold the timber on their land. They had the right to sell, provided they had in good faith made the entries for their own use, not for the benefit of another or on speculation. If anything at all, the fact of the nearness of dates would have been a circumstance amounting to a mere suspicion of fraud. Such circumstances are not to be deemed notice.

"Where an inference of notice is to affect an innocent purchaser it must apear that the inquiry suggested, if fairly pursued, would lead to a discovery of the defect."

Simmons v. Morse, 2 Fed., 325.

But suppose this fact had met the attention of Clark, and that his suspicions had been aroused. He might then have called for the original applications and other papers in the case. He would have found that each entryman had sworn that he did not apply to purchase the land on speculation but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatever, by which the title which he might acquire from the government of the United States would inure in whole or in part to the benefit of any person except himself.

U. S. Compiled Stat., Vol. 2, Sec. 3, p. 1546.

This was the affidavit made by each and every entrymen, as shown by the record. Would not this have been sufficient to have overcome his suspicions? But assume that it was not, he might then have applied to the officers of the land office to know whether there was any fraud in these entries. The register and receiver had seen all these parties, knew all that had occurred at the land office—how the entrymen came and who their witnesses were. What answer would they have re-

ceived? They would have stated to him that so far as they knew the entries were properly made and that they were not tainted with fraud—that thirteen patents had been issued and that the others would be issued, as they were afterwards.

In Lea v. Polk County Copper Company, *supra*, the charge of fraud was that the land had been entered by William Pinkney Lea; as orginally filled up, the patent was in the name of William P. Lea; the register altered it by adding the letters "a-r-k" to the P. This alteration was plain to be seen; William Park Lea afterwards sold the land to parties who claimed as bona fide purchasers. It was claimed by complainant, who sought to set aside the sale, that the apparent alteration was sufficient to put the purchasers upon inquiry. The court says:

"Now, if they had inquired of the register, he could only have told them that he put the letters there in the course of his official duty; but when, he could not say, this being what he proves here. Then the presumption comes in that, as a public officer, the register did his duty, and he who impeaches the act as illegal must prove the allegation."

Should the inquiry end here? We think so most certainly. Clark was not required to pursue it further. He was not required to seek out hidden fraud or to seek for the motives of the entrymen in selling their timber to Martin-Alexander Lumber Company, or of

the Martin-Alexander Lumber Company in selling to the Detroit Timber and Lumber Company.

It can hardly be supposed that a vendee is bound to inquire of the parties to a conveyance whether they are committing a fraud by suppressing anterior deed, etc., for it is evident that if fraud was intended, deception would be carried out by denial. Such inquries are not resorted to in practice in business transactions.

Hare & Wallace Notes to Leading Cases in Equity, Vol. 2, pp. 66, 67.

Miller v. Froley, 23 Ark., 745.

Ferguson v. May, 4 Ky. Law Rep., 989.

"A concealed defect or secret equity arising from the conduct of those who originally owned the property of which the purchaser had no notice cannot be set up against him."

Danberry v. Robinson, 14 N. J. Eq., 213.

To secure in equity all the rights of a bona fide and duly vigilant purchaser one is not required to make inquiry whether there is fraud or trust where the title and possession give no indication that there is either.

Leach v. Ausbacher, 55 Pa. St., 85.

Yardly v. Torr, 67 Fed., 857.

Fletcher v. Peck, 6 Cranch, p. 135.

Anderson v. Roberts, 18 Johns. R., p. 531.

But supposing Clark had deemed it his duty to have gone to each of the entrymen and to have put

Martin, Alexander and Copeland on the rack, we know each one would have stated to him what their sworn testimony in this case has been—that there was no prior agreement, and that the entries were made in good faith for the sole benefit of the entrymen and not for the purpose of speculation.

"The omission of the party to make inquiry cannot be material when such inquiry would not have led to a knowledge of the fact with the notice of which it is sought to charge him. The question is whether the inquiry, if it had been made, would have afforded information on any fact material to his rights. If his conduct would have been the same whether he had or had not made inquiry, his omission cannot be a reason for charging him with notice."

Am. & Eng. Enc. of Law, Vol. 21, p. 588, and authorities cited.

We think we have clearly shown that by the most diligent inquiry Clark could not have discovered any fraud in making the entries. It cannot, of course, have been expected of him that he could have made as thorough an investigation as the government has since made. The law does not require that he should. If such were the requirement there would either be no transactions in real estate or some inquisitorial tribunal would have to be organized to inquire into the conduct and motives of all persons desiring to sell.

But supposing Clark had known all the facts then

that are disclosed by the record, would he have been charged with bad faith in making the purchase? So learned a lawyer as the circuit judge before whom this case was tried below, with full knowledge of all the facts, has by his decree solemnly declared that there was no fraud in making these entries. Even if the question had been a doubtful one and Clark had in the exercise of his honest judgment, concluded to purchase and the court had afterwards determined that the entries were fraudulent, he would still have been a bona fide purchaser. All that is required is that the purchaser act in good faith—that there is an absence of bad faith—that he is in no way connected with the fraud.

"A party may have notice of conflicting claims, and still, in the exercise of an honest judgment as to the rightful owner, buy property and pay for it, and be acting in good faith."

U. S. v. Southern Pac., 184 U. S., 54.

2. It was also urged by appellant that Clark and McDonald must have learned from the books the condition and nature of the accounts against Dorsey and Moran and wife—that the amounts charged to them were for moneys advanced for the entry of these lands. If they learned the facts with regard to those entries, they were bound to learn the facts with regard to other entries. We cannot accept the reasoning of appellant's solicitors on this point. It might have been true that the

company had advanced money to one, two or three entrymen and yet not have advanced it to others. Nor does it follow that Clark or McDonald would have understood the nature or effect of these entries.

It must be remembered that the trade was made between the Detroit Timber & Lumber Company and the Martin-Alexander Lumber Company on the 14th day of January, 1901. At that time, payment in full was made for all the timber deeds. This payment is represented by the $17,456.79 paid Martin for sums advanced by him to pay out for timber deeds, as shown by the trial balance (Rec., pp. 385 and 396). So, as we will hereafter attempt to show, if Clark or the Detroit Timber and Lumber Company were acting in good faith at the time the purchase money was paid, nothing that occurred thereafter could change or alter their position. They bought and paid at that time for all the timber owned by Martin-Alexander Lumber Company on those lands. What knoweldge, therefore, did Clark have at that time?

Clark's testimony is that he never examined the books of the company—all he had was their trial balance showing their assets and liabilities and the amount invested in lands (Rec., pp. 65 and 68). When asked if he verified the trial balance by looking over the books his answer was "No. Mr. Rowe, their bookkeeper, assured me the trial balance was correct according to

their books. I never had anything to do with their books" (Rec., p. 40).

But what information could Clark or McDonald have obtained from either of the Morans or Dorsey? The testimony of Seborn Z. Moran and Dorsey is in the record. They were evidently hostile to the defendants, yet no witnesses swore more lustily than did they that their entries were made in good faith, without any prior agreement and for their own use. (For testimony of Moran on this point, see Rec., pp. 263 to 265, and for the testimony of Dorsey see Rec., pp. 288 and 289). The testimony of these witnesses will show as strongly as it can show that as to the entries made by them there was no violation of the law or any fraud practiced on the government. What, then, could Clark or McDonald have obtained from that source?

It might with some propriety be said that a person buying from an insolvent person should be required as to creditors of the vendor to examine his books— but we know of no rule or reason that would require a person buying from a person or corporation entirely solvent to do so. It could not be reasonably supposed that if Martin-Alexander Lumber Company had intended, or had in fact, entered into an agreement or combination with the entrymen to defraud the United States government out of these lands that they would have perpetuated the evidence of their fraud upon the books of their company. And it is not reasonable to suppose

that a purchaser from them should be expected to find such evidence there. As a matter of fact, the accounts referred to are, as we understand it, mere "stumpage" accounts entered up under the name of the individual, showing in the debtor column what the timber had cost, and in the credit column the amount of timber cut at fifty cents per thousand feet. All the accounts of Martin-Alexander Lumber Company were kept in this manner regardless of whether the timber had been bought on the lands in controversy or on other lands (Rec., p. 70). How the timber had been paid for was not known to Clark and did not concern him so long as it had been paid. He did not know at the time the "Timber and Stone" lands, as they were called, from any other (Rec., p. 70).

The fact that Clark, acting for the Detroit Timber and Lumber Company, made no investigation of the title to the lands purchased from Martin-Alexander Lumber Company, cannot, we think, cast even a suspicion upon the bona fides of this tranasction.

The argument upon this point was made by counsel for appellant upon the seeming assumption that the lands in controversy were all that were purchased by the Detroit Timber and Lumber Company at that time; as a matter of fact, these lands did not constitute more than about one-third of the assets of the Martin-Alexander Lumber Company. They had in addition timber contracts on seven thousand acres of land, at the same

rate of stumpage, procured from the receiver of the Smithton Lumber Company (Rec., p. 412). The Detroit Timber and Lumber Company paid for the assets of the Martin-Alexander Lumber Company sixty thousand dollars. The amount paid for the timber on the lands in controversy amounted to only $17,456.79 (Rec., p. 395).

Certainly to secure that amount of timber by a fraudulent device would not justify a company in expending nearly four times that sum.

Clark had been assured by Martin and Alexander both that the titles were good, and he was willing to take their word for it. When questioned why he was willing to rely upon their statements his reply was, that he considered them good, reputable citizens and reliable men, and the timber they had was only enough to keep the mill going three years, and that he didn't think it was necessary to get abstracts, etc. He also states that every title obtained from them, with the exception of the land in controversy, was just as it had been represented (Rec., p. 392). A man should certainly not be condemned for having confidence in his fellowmen, especially when it is proved that that confidence has not been abused.

3. It was contended by appellant that the Detroit Timber and Lumber Company was not a bona fide purchaser even on March 1, 1901, for the reason that it had not acquired the legal title.

It was asserted in appellant's brief in the circuit court of appeals, that:

"It (the Detroit Timber and Lumber Company) acquired the title to no part of this property until March 27, 1901. Deeds were then taken through the months of April and May. One deed was taken September 17, 1901. The instrument of conveyance by the Martin-Alexander Company to the Detroit Timber and Lumber Company, while it purports to have been executed on the first of March, 1901, was not attested until the 11th of March and was not acknowledged until the 2d day of May following. This leaves the date of its delivery in doubt. At any rate it was not sooner than March 1, 1901."

It was also urged that as the amount paid the entrymen at the expiration of their deeds was not a substantial part of the consideration, and not sufficient to make the Detroit Timber and Lumber Company a bona fide purchaser, that "the large amounts had been paid long prior to the execution of the deed and constituting an antecedent debt or claim cannot be regarded as valuable considerations." In view of the allegations of the bill and the conceded facts in this case, we must say that there is nothing in the record upon which to base this argument. A statement of the facts, will, we think, be a complete answer.

First—The allegations of the bill, conceded by the answer are "that on the 14th day of January, 1901, the

said Martin-Alexander Lumber Company sold, assigned and transferred to defendant, Detroit Timber and Lumber Company, all said timber contracts and leases for the timber on said lands," and that at that time the Detroit Timber and Lumber Company knew of the fraud that had been perpetrated by its said vendor and the entrymen (Rec., p. 10).

The allegation that the purchase was made on the 14th day of January, 1901, is borne out by all the testimony. Clark so testifies, as does also Alexander.

The statement of Alexander is to the effect that as soon as Martin accepted Clark's proposition, a stockholders' meeting of the Martin-Alexander Lumber Company was called, at which Martin presided. Means and Alexander, who controlled his own and his wife's stock (Rec., p. 409) were present. Martin tendered his resignation and Clark was elected in his place for the *purpose of winding up the business of Martin-Alexander Lumber Company.* (Testimony of Alexander, Rec., p. 407).

A copy of the resolutions adopted at that meeting will be found on pages 427 and 428 of the record, and for the convenience of the court we will here copy them in full:

Pike City, Ark., January 14, 1901.

1. "Resolved, That the Martin-Alexander Lumber Company does hereby sell all its personal and real property and all debts due it, to the Detroit Timber and

Lumber Company, for the sum of sixty thousand dollars ($60,000.00) cash and the assumption of all the liabilities of this company, and that the said sum be divided among the stockholders of this company as follows:

To E. B. Martin	$ 34,850.00
To Mrs. B. M. Alexander	24,850.00
To A. V. Alexander	150.00
To J. O. Means	150.00

The said sums due the said E. B. Martin and J. O. Means are now paid to them in cash by the Detroit Timber and Lumber Company, and the said Mrs. B. M. Alexander and A. V. Alexander agree to defer the payment of the sums due them until their application for stock in the said Detroit Timber and Lumber Company is acted upon by that company.

2. Resoved, That in order to relieve the said E. B. Martin, who is a resident of Chicago, Ill., from further attendance during the time necessary to effect a transfer of the said property so sold, his stock is transferred to U. L. Clark and . Detroit Timber and Lumber Company, and the said U. L. Clark is for the purpose of said transfer elected temporary president of this company instead of E. B. Martin, who has this day resigned."

The above is a true copy of the resolutions adopted by the Martin-Alexander Lumber Company.

A. V. ALEXANDER,

Secretary.

Nothing can be clearer than that as between the parties the Detroit Timber and Lumber Company purchased all the assets of the Martin-Alexander Lumber Company on that date. What, therefore, so far as the issues of this case are concerned, did the Detroit Timber and Lumber Company acquire by this purchase? The counsel for appellant seem to treat the timber contracts, as they are called, as mere choses in action, and that all that the Detroit Timber and Lumber Company acquired was a lot of open accounts against the various entrymen. This view of the matter is entirely erroneous. The so-called timber contracts were in fact deeds for all the timber standing upon the land. They were absolute conveyances, and as between the entrymen and Martin-Alexander Lumber Company, passed all the title the entrymen then had or might thereafter acquire to the timber.

A form of the timber deeds given in each case will be found on pages 35 and 36 of the record. The language used is apt to convey and does convey a legal title to the timber. The deed recites that the vendor has bargained, sold and conveyed all of the timber and trees now standing upon the land described. It also admits the payment of $407.70 of the purchase price, and stipulates for the payment of the balance. It is signed and regularly acknowledged. At the time these timber deeds were made final receipts had been issued by the land office to the entrymen. On the 14th day

of January, 1901, thirteen of the entrymen had their patents. There can be no question but that at that time the Detroit Timber and Lumber Company obtained at least the equitable title to all the timber standing on the lands in controversy.

The fact that all the purchase money was not paid then does not affect the title acquired. The greater part of it was paid and the Detroit Timber and Lumber Company was irrevocably bound to pay the remainder, viz.: the amount due Alexander. The resolution of the Martin-Alexander Lumber Company was in equity a conveyance of all its title to the Detroit Timber and Lumber Company, under the maxim that "Equity regards that as done which should be done."

The resolution also directed Clark to make the formal transfer. This was afterwards done, on March 1. It is true this conveyance was not acknowledged until in May—but as Clark was president of both companies we think the conveyance would be treated as having been delivered at the time of its execution. It was good as a conveyance without acknowledgment; the only effect the acknoweldgment could have would be to admit it of record. But as we shall hereafter show, there can be no significance attached to the time the deed was delivered.

There was no question made by the pleadings as to when the transfer was made, as we have above stated, and we think the appellant is bound by the issues as made.

The strength of the appellee's position lies in the fact that without notice and for a valuable consideration it purchased this property, both from the Martin-Alexander Lumber Company and the entrymen, and afterwards acquired the legal title to it, both by the conveyance from the Martin-Alexander Lumber Company above referred to and by the warranty deeds from the entrymen after they had procured their patents from the government. It must be conceded, we think, that on the 14th day of January, when the purchase was made and the greater part of the price paid, that the Detroit Timber and Lumber Company had no notice of any fraud in these transactions. Nor can notice of any of the alleged irregularities or fraud be brought home to it until long after the settlement with Alexander, and the taking of the deeds from the entrymen. The first notice it had was when Schlierholtz began his investigation in October, 1901. At that time it had acquired not only the equitable but the legal title to all this property.

Our contention is that the time this suit was brought the Detroit Timber and Lumber Company had not only the equitable but the legal title to all this property.

The statutes of Arkansas provide:

"If any person shall convey any real estate by deed, purporting to convey the same in fee simple absolute, or any less estate, and shall not at the time

of such conveyance have the legal estate in such lands, but shall afterward acquire the same, the legal or equitable estate afterward acquired shall immediately pass to the grantee, and such conveyance shall be as valid as if such legal or equitable estate, had been in the grantor at the time of the conveyance." (Kirby's Digest, Sec. 734.)

It acquired the legal title to the timber on the lands of the entrymen from whom it did not take deeds to the fee simple title by reason of the fact that those entrymen had conveyed the timber to the Martin-Alexander Lumber Company and had afterward obtained their patents; this vested the absolute legal title to the timber in the Martin-Alexander Lumber Company under the statute of Arkansas, and that company then conveyed all its title to the Detroit Timber and Lumber Company (Rec., pp. 34, 35, 425, 426). As to the other entrymen, fee simple deeds were executed and delivered to the Detroit Timber and Lumber Company after the patents had been issued, as will be seen from an examination of the records above referred to.

The authorities relied upon by appellants to sustain its position are Hawley v. Diller, 178 U. S., 476, and Butler vs. Douglass, 1 McCrary, 630. We have not had an opportunity of examining the last case cited, but take it that the doctrine pronounced by it is not different from that of Hawley v. Diller. The case of Hawley v. Diller is not, we think, in any respect applicable

to the case at bar, nor in conflict with the authorities we shall cite to maintain our position. Hawley v. Diller was not a case where the government was attempting to set aside a patent, but was an action instituted by Hawley, who had at best an equitable title against Diller who entered the land, after the entry by Hackley, Hawley's vendor, had been set aside. Diller procured the patent from the government and was therefore the legal owner of the property. In other words, it was a contest between the equitable title of Hawley and the legal title of Diller. The most that it can be said to have decided was, that a purchaser from an entryman, before a patent issued, acquired only an equitable title subject to be defeated by the refusal of the government to issue a patent; that the land department had jurisdiction to cancel an original entry for public lands at any time before a patent issued. In other words, that one who purchases before patent issues is a purchaser *sub judice.* It is not necessary for us if we could to combat this doctrine.

Here the position of the parties is reversed. The government has only an equitable title, while the Detroit Timber and Lumber Company has equally as strong equities as those of the government and has in addition the legal title.

"Where there is equal equity the law must prevail, and this is generally true; for in such a case the defendant has an equal claim to the protection of a

court of equity for his title as the plaintiff has to the assistance of the court to assert his title; and then the court will not interpose on either side; for the rule then is '*In aequali jure melior est conditio possidentis,*' and the equity is equal between persons who have been equally innocent and equally diligent. It is upon this account that a court of equity constantly refuses to interfere either for relief or discovery against a bona fide purchaser of the legal estate for a valuable consideration without notice of the adverse title, if he chooses to avail himself of the defense at the proper time and in the proper mode. *And it extends its protection equally if the purchase is originally of an equitable title without notice and afterwards with notice the party obtains or buys in a prior legal title in order to support his equitable title.* This doctrine applies strictly in all cases where the title of the plaintiff seeking relief is equitable. But it yet remains a matter of some doubt whether it is applicable to the case of a plaintiff seeking relief upon a legal title. The purchaser, however, in all cases must hold a legal title, *or be entitled to call for it,* in order to give him the full protection for his defense."

Story's Eq. Jur., Vol. 1, 64 c., 13th Ed.

The italics are ours.

See, also,

Pomeroy's Eq. Jur., Vol. 2, Secs. 740, 766 and 771.

In the case of United States v. Winona & St. Peter R. R. Co., 165 U. S., 463, in discussing the act of 1896 passed for the purpose of protecting bona fide purchasers of railroad land, the court says:

"Further, there was no need of any legislation to protect a bona fide purchaser. This had been settled by repeated decisions of this court. United States v. Burlington & M. R. Co., 98 U. S., 334, 342. Colorado Coal & Iron Co. v. United States, 123 U. S., 307, 313, reaffirmed in United States v. California & O. Land Co., 148 U. S., 31, 41. For in each of those cases it was decided that, although a patent was fraudulently and wrongfully obtained from the government, if the land conveyed was within the jurdisdiction of the land department, the title of a bona fide purchaser from the patentee could not be disturbed by the government, so that this provision was absolutely unnecessary if that which is now claimed by counsel for the government is all that was intended by Congress."

It was contended by counsel for the government that the sums paid the entrymen, at the time the deeds were taken from them, was not an adequate consideration. The entrymen as shown by the timber deeds to Martin-Alexander Lumber Company had been paid by that company sums ranging from four to five hundred dollars for the timber on the land. These sums the Detroit Timber and Lumber Company repaid the Martin-Alexander Lumber Company and necessarily

formed part of the purchase money paid by the Detroit Timber and Lumber Company. For the fee in the land the Detroit Timber and Lumber Company paid such sums as were agreed upon betwen them and the entrymen. There is no testimony that the Detroit Timber and Lumber Company procured the lands for an inadequate consideration. But had they done so in fact, there are authorities that hold that all that was necessary was that the consideration should be valuable.

"The consideration, however, while it must be valuable, need not be commensurate with the value of the property."

Amer. & Eng. Enc. of Law, Vol. 23, p. 488.

"The court will not inquire whether the consideration was adequate but only whether it is valuable."

Bullock v. Sadlier, Ambler, 763.

"Where a thing for a valuable consideration is agreed to be done, a court of equity considers it as done, and therefore, from the time of an agreement to purchase and the money paid this court considers the estate as the property of the purchaser."

Dean v. Anderson, 34 N. J. Eq., 508.

"The amount of the consideration is not necessarily material when the grantor is solvent."

Wait on Fraud. Convey. and Creditors' Bills, 1st Ed., Sec. 369.

It does not matter in this case that the Detroit Timber and Lumber Company did not acquire the legal

title at the time it paid the purchase price for these lands.

"The settled doctrine is that if a second or other subsequent holder who would otherwise be postponed to the earlier one obtains the legal estate or *acquires the best right to call for a legal estate* he thereby secures an advantage which entitles him to priority."

Pomeroy Equity, Sec. 727.

"It has already been stated that in order to avoid the postponement of the latter equity freedom from notice is indispensable. The notice, however, here referred to is a notice existing at the acquirement of the equity, not a notice at the completion of the right. The latter purchaser or incumbrancer, on payment of his money, becomes an honest claimant in equity, and is entitled, if he can, to protect his claim. But he is not bound to look for protection until he has ascertained that the danger exists; and his right to obtain it will continue, notwithstanding the institution of a suit to settle the priority of the conflicting claimants." Adams Equity, 161-162.

See, also,

Deuber Watch Case Manufacturing Company v. Daugherty, 62 Ohio State Rep., 589.

And this is the rule laid down by the supreme court of the United States.

In Lea v. Polk County Copper Company, 62 U. S., 493, the court says:

"And so the respondents, the Mining Company, might buy in the legal title of William Park Lea, after they had notice, if they were innocent purchasers, holding under John Davis, and Mastin, Keith & Caldwell. 1 Story Eq., Sec. 411."

Even if the Detroit Timber and Lumber Company had never acquired the legal title it might well be contended that as they had a right to call for it, the government could not recover in this case. The Detroit Timber and Lumber Company in good faith paid the purchase money and were in possession of the property. The title of the government is only an equitable one.

"But although as a general rule the defense of purchase for value and without notice can apply only in favor of one holding the legal estate and against the holder of a prior equitable title, yet it has been said that where the equity of the prior party does not amount to a property right—a title or estate—but is a mere right 'to set aside a deed for fraud or to correct it for mistake,' it is not essential that the subsequent party should have the legal estate." Amer. & Eng. Enc. of Law, Vol. 23, p. 486.

"If the subsequent party having purchased his equitable interest for value and without notice has the best right to call for the legal title, he will be protected against the prior equity to the same extent as if he had actually obtained a conveyance of the legal estate;

as against him equity will afford no assistance to the holder of the elder equity." Idem.

In the case of Town of St. Johnsbury v. Calvin Morrill, 55 Vt. Rep., 165, the facts were as follows:

Morrill, who was first selectman of the town of St. Johnsbury, had purchased a piece of real estate with the funds of the town and held it as trustee for the town, the trust not appearing in the deed made to him. The land was used by the town for getting out stone and drawing dirt therefrom. This use was continued for several months. Afterwards Morrill sold the property to the slaughter-house company, in payment whereof the company verbally assigned to said Morrill a written award in their favor of land damages against a railroad company for the sum of three hundred dollars. No deed was executed by Morrill to the slaughter-house company; that company went into possession of the land, fenced and to some extent improved it, and was in possession at the time the suit was brought. Suit was afterwards brought by the town against Morrill to compel him to make a deed of the land to it and for other relief. The slaughter house company intervened and claimed the title under its purchase above stated. The courts say:

"The question presented is unlike most of the cases where the defense of purchaser for value without notice has been invoked, but the case is one where the defense may be made, although the defendant company has got

no actual conveyance. Lord Manners observes: 'I have always thought that he who had the best right to call for the legal estate is entitled to this defense.' 1 Ball and Beat., 171. Lord Cowper lays it down as a rule that a purchaser for value without notice shall not be damaged in equity, not only where he has a prior legal estate but where he has a better right to call for a legal estate than his adversary. Lord Hardwick sanctions the same doctrine in Wiloughby v. Wiloughby, 1 Term R., 763. Lord Cranworth declares that the principles on which the court protects a purchaser for value without notice is not confined to cases where he has got in the legal estate and that circumstance will be quite unimportant in determining whether the court will interfere or not. He says further, speaking of the case in hand: 'His equity depends on this that he stands equitably in at least as favorable a position as his opponent, and therefore the court will not interfere against him.' 5 House of Lords, C., 905.

"Lord Redesdale lays down the rule as follows: 'Supposing a plaintiff to have a full title to the relief he prays and the defendant can set up no defense in bar of that title, yet if the defendant has any equal claim to the protection of a court of equity to defend his possession, as the plaintiff has to the assistance of the court to assert his right, the court will not interfere on either side.' Mitford P., 361. The doctrine is

clearly set forth in notes to Bassett v. Nosworthy, 2 Leading Cases in Equity, 102."

The court further on says:

"The equity of the defendant company is the equity of a purchaser for value in good faith without notice. To this extent the parties are on an evener. But the defendant company is in possession and has expended money in repairs and improvements. They may well say to the court, 'You should not interfere when our right of possession is just as good as the orator's to turn us out and put the orator in, or transfer the legal title to the orator so that it will be enabled to turn us out."

Since the patents issued before the government sought to attack the entries, the bona fide purchaser from the entrymen is in the same position he would have occupied if the patents had issued before his purchase. If the patent issues before it is attacked, whether before or after sale by the patentee is immaterial.

U. S. v. Clark, 125 Fed., 774.

4. It was stated by counsel for appellant in the circuit court of appeals that "U. L. Clark bought the stock of Martin and Means in the Martin-Alexander Lumber Company.' He was then a stockholder in that company. The effect of any notice that the Martin-Alexander Lumber Company had had was not changed from the fact that Clark became a stockholder therein.

An examination of the conveyance from the Martin-Alexander Lumber Company to the Detroit Timber and Lumber Company shows that it was not in fact a sale for value, but the merger of the former into the latter.

Replying to this argument, we say in the first place, the question here is not what notice the Martin-Alexander Lumber Company had, but what notice the Detroit Timber and Lumber Company received, at the time the purchase was made. Notice to the Martin-Alexander Lumber Company could not be notice to the Detroit Timber and Lumber Company. Those two companies were adversary the one to the other. They were trading at arm's length. The trade had been made before Clark was elected president of the Martin-Alexander Lumber Compay—the liability of the Detroit Timber and Lumber Company became fixed; Clark gave his check to Martin that day for $27,456.79 (Rec., p. 384).

In the second place, we reiterate that it was not the purchase of the stock of the Martin-Alexander Lumber Company but of its lands, timber and other assets. Not only is this the statement of the witnesses, but the resolution passed by the Martin-Alexander Lumber Company, and the conveyance from the Martin-Alexander Lumber Company to the Detroit Timber and Lumber Company both so declare. The language of the resolutions is, "Resolved that the Mar-

tin-Alexander Lumber Company does hereby sell all its personal and real property," etc.

The language of the deed is that "the party of the first part for said consideration, does hereby grant, bargain, sell and convey to the said party of the second part," etc. The method adopted was the one Clark thought best to obtain a transfer of the property of the one company to the other.

"It is a maxim in equity that it looks to the intent and not to the form. It always looks at the substance of things, and attempts to reach that, and to enforce the rights and duties which spring from that and the real intent of the parties."

Varner v. Rice, 44 Ark., p. 251.

But in no event could anything that transpires with reference to the transfer of the stock at that time affect the legal title obtained by the Detroit Timber and Lumber Company afterwards from the entrymen after they had procured patents.

In the third place, for the reasons above given, there was no merger of the two companies. And there was no merger for the additional reason that one company was organized under the laws of the State of Michigan and the other under the laws of the State of Arkansas, and there could be no merger or consolidation without legislative authority, which does not appear.

Thompson on Corp., Vol. 1, Sec. 315.

Am. & Eng. Enc. of Law, Vol. 6, p. 802.

There was no attempt to pass the franchises of the Martin-Alexander Lumber Company to the Detroit Timber and Lumber Company, and it could not have been done.

In the case of the Key City, 14 Wall., 653, the two companies united their stock in trade, their vessels and their barges and other property, and formed a new corporation, the corporators of which were taken exclusively from those in the two old companies.

In the case of McAlpine v. Union Pacific Ry. Co., 23 Fed., 168, it was the intention and purpose expressed in the articles between the two railroad companies to consolidate and they did consolidate. The companies are referred to as the "constituent" companies in the "Articles of Consolidation." Such are not the facts in this case. The trade had been made in all its details before Clark became possessed of any of the stock of the Martin-Alexander Lumber Company. Martin, the largest stockholder, passed out; no stock of the Detroit Timber and Lumber Company was issued to him. As appears from the resolution of the Martin-Alexander Lumber Company, the transfer of its assets to the Detroit Timber and Lumber Company was ordered before the stock of Martin in that company was ever transferred to Clark. The facts show clearly that a sale was intended and in fact made.

5. It was urged by appellant in the circuit court of appeals that the defense of bona fide purchaser had not been properly pleaded by appellee. To this we reply that no exceptions were taken to the answer, and a general replication was filed. It is therefore too late to raise the objections for the first time on appeal.

Boone v. Chiles, 10 Peters, 177.

Responding to the last point suggested by appellant in the circuit court of appeals, that in any event the Detroit Timber and Lumber Company was not a purchaser for value as regards all those entries for which it secured no deeds because it has never acquired the legal title, we desire to say that we think we have answered it by our argument in the former part of this brief, to the effect that as the Detroit Timber and Lumber Company, by its purchase became the legal owner of the timber on the land, whether the sale of the timber was made before or after the patents had been issued to the entrymen when the patents were issued, the legal title so acquired by the entrymen, in the language of the statutes of Arkansas, inured to the benefit of the entrymen's grantees.

7. In conclusion we desire to say that we feel that this transaction on the part of the Detroit Timber and Lumber Company was an honest one. It was one had in due course of trade. It was in no way connected with the entering of the land. It bought the property and paid a fair price for it, without notice of any defect

in the title. It stands before this court with clean hands. The government has been paid every dollar it asked for its land, and we do not believe that a court of equity where such a state of facts exists will find that it is its duty to take from our client this property.

Respectfully submitted,

THOMAS C. McRAE,
JAMES F. READ,
U. M. ROSE,
GEORGE B. ROSE.

APPENDIX.

Timber cut from lands to which Detroit Timber and Lumber Company had timber deeds, which was patented in 1900:

E. Winslow	534,263	ft.,	date	patented,	Aug.	9, 1900
J. C. Means	218,020	"	"	"	"	"
J. F. Patterson	596,944	"	"	"	"	"
John Scott	125,688	"	"	Feb.	24,	"
Martha Gregory	29,358	"	"	"	"	"
Robert Gregory	384,600	"	"	"	"	"
C. O. Means	118,779	"	"	"	"	"
H. Lintz	291,804	"	"	Nov.	28,	"
C. O. Means	118,779	"	"	Aug.	9,	"
	2,299,456	ft.				

Timber not cut from lands to which Detroit Timber and Lumber Company hold timber deeds, which was patented in 1900:

J. H. Scott ..... 124 acres, date patented, Feb. 24, 1900
N. G. Gregory ..... 92 " " " " " "
Martha Gregory 80 " " " " " "
H. Lintz ..... 90 " " " Nov. 28, "

386 acres.

Timber cut from lands to which Detroit Timber and Lumber Company hold timber deeds, which was patented after February 1, 1901:

Gus Copeland ..... 728,960 ft., date patented, Feb. 9, 1901
H. James ..... 92,255 " " " " " "
B. B. Copeland ..... 704,680 " " " Mar. 23, "
Emma Lintz ..... 148,028 " " " " " "

1,673,923 ft.

Timber not cut from lands to which Detroit Timber and Lumber Company hold timber deeds, which were patented after February 1, 1901:

S. Garrison ..... 160 acres, date patented, Feb. 9, 1901
B. Garrison ..... 160 " " " " " "
Emma Lintz ..... 30 " " " Mar. 23, "

350 acres.

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Supreme Court U.S.
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No. 165.

IN THE

Supreme Court of the United States.

THE MARTIN-ALEXANDER LUMBER COMPANY ET AL. ..... *Appellants,*

v.

THE UNITED STATES ..... *Appellee.*

STATEMENT AND BRIEF FOR APPELLANTS.

U. M. ROSE,
G. B. ROSE.

Gazette Printing Company, Little Rock, Ark.

IN THE

Supreme Court of the United States.

THE MARTIN-ALEXANDER LUMBER COMPANY ET AL. ..... *Appellants,*

v. No. 504.

THE UNITED STATES ..... *Appellee.*

STATEMENT AND BRIEF FOR APPELLANTS.

STATEMENT.

This was a suit instituted on behalf of the United States to cancel forty-four patents issued to as many different parties, conveying to the several patentees certain lands belonging to the government under the Timber and Stone Act.

The several entrymen, the Martin-Alexander Lumber Company and the Detroit Timber and Lumber Company were made parties defendant in the bill.

The bill alleged in substance that the lands belonged to the government; that they were subject to entry and that the forty-four entrymen respectively conspired with the Martin-Alexander Lumber Company and its officers to enter the lands and obtain the timber growing thereon for the Martin-Alexander Lumber Company; that in pursuance of said conspiracy the said several parties made the entries under an agreement with the Martin-Alexander Lumber Company to convey to it the timber on said land, and that after the several entries were made the respective entrymen conveyed to the Martin-Alexander Lumber Company the timber standing on his or her land (Tr., 1-14).

An amendment to the bill was filed, which alleged that each of the entrymen entered into an agreement with the Martin-Alexander Lumber Company to the effect that each and every entry made by them respectively should be made for the use and benefit of said Company; or that if no such agreement was made, each and every entryman made his or her entry on speculation and not in good faith (Tr., 66, 67).

The Martin-Alexander Lumber Company filed an answer denying specifically and in detail all the allegations of the bill, in so far as they in any way charged that the entries were made for its benefit; but alleging that so far as it is advised, the entries were all made in good faith by the several entrymen, and that it

acquired from each of them what is commonly known as timber contracts, conveying to it the timber growing on the lands entered; but denies that any entry was procured to be made by its officers, or any of them, or that its officers procured any false or fraudulent affidavits to be made in connection with the entries (Tr., 15, 19).

Each of the cross-appellants, except Sherman L. Garrison and Barbara A. Garrison, filed separate answers, denying all the allegations of the bill charging fraud upon him or her; but in some way they were omitted from the printed record.

In the prosecution against certain officers of the Martin-Alexander Lumber Company, many of the entrymen were produced as witnesses and examined on behalf of the government. The testimony given by them was, by consent of parties, filed as testimony in this cause.

The testimony of other witnesses, including the officers of the Martin-Alexander Lumber Company, was taken on behalf of the government, and the defendants in this cause also took testimony. The case was then finally heard upon the pleadings and proof, and the bill was dismissed by the circuit court (Tr., 428).

The government appealed to the United States Circuit Court of Appeals, where a decree was rendered reversing the decree of the circuit court and remand-

ing the cause, with directions to enter a decree to the effect that the patents issued to seventeen of the entrymen, who are cross-appellants her, be avoided, with costs in favor of the United States, against them and the Martin-Alexander Lumber Company, but in favor of the Detroit Timber and Lumber Company and all entrymen except the seventeen above named (Tr., 455).

The government took an appeal from so much of the decree as was against it (Tr., 456).

Thereupon the seventeen whose several entries were canceled by the decree of the court of appeals and the Martin-Alexander Lumber Company filed their petition for appeal, and on the same day filed their respective assignment of errors and appeal bond (Tr., 464, 467).

The bond was approved and the appeal allowed (Tr., 467, 468).

The Martin-Alexander Lumber Company assigns as error:

1. That the court erred in holding that either of the seventeen entrymen applied to enter the land he or she obtained on speculation for the use or benefit of the Martin-Alexander Lumber Company, and not in good faith to appropriate it to his or her own exclusive benelt.

2. That the court erred in holding that any entryman made his or her entry on speculation for the use

and benefit of the Martin-Alexander Lumber Company.

3. That the court erred in reversing the decree of the circuit court.

4. That the court erred in rendering a decree for costs against the Martin-Alexander Lumber Company; and

5. That the court erred in not rendering a decree affirming the decree of the circuit court (Tr., 465).

The seventeen entrymen made substantially the same assignment of error (Tr., 465, 466).

The circuit court of appeals in effect held that there was no agreement on part of the entrymen to make their entries for the benefit of the Martin-Alexander Lumber Company; but that the said seventeen cross-appellants did make their entries on a speculation, for the use and benefit of that company; and not in good faith to appropriate it to his or her own exclusive benefit.

The contention of the cross-appellants is, that the latter finding of the circuit court of appeals was erroneous and not supported by the evidence; that each of the seventeen entries was made in good faith; that each of them should be sustained, and that no decree for costs should have been directed against either of the entrymen or the Martin-Alexander Lumber Company.

The brief filed on part of the appellees on the main appeal contains an abstract of the record, in so far as it bears upon the positions here taken, and also a complete argument upon the questions involved. As the cases are heard together, we deem it unnecessary to repeat in this brief what has been incorporated in that; but beg leave to refer to it, and ask the court to consider it as if filed on the cross-appeal.

Respectfully submitted,

U. M. ROSE,

G. B. ROSE.

Supreme Court of the United States.

Nos. 106 and 165.—October Term, 1905.

106 The United States, Appellant,
vs.
The Detroit Timber and Lumber Company et al.

Martin-Alexander Lumber Company et al., Appellants,
165 *vs.*
The United States.

Appeal and Cross Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

[February 19, 1906.]

These are cross appeals from a decree of the Circuit Court of Appeals for the Eighth Circuit, affirming in part and reversing in part a decree of the Circuit Court for the Western District of Arkansas.

The bill was filed on April 5, 1902, by the United States against the Detroit Timber and Lumber Company, the Martin-Alexander Lumber Company and a number of individual defendants. The object of the bill was to set aside patents to forty-four tracts of land issued to the individual defendants and all conveyances, contracts and leases from them purporting to convey title to or a right to cut and remove timber from the lands, and also for an accounting of the timber cut and removed from the lands by the two companies, and judgment therefor.

The charge was that the lands were entered under the timber act of June 3, 1878, (20 Stat. 89,) and in fraud of its provisions, in that the purchase money was advanced by the Martin-Alexander Company under contracts with the entrymen that after the entries they should convey to it all the standing timber thereon. The Martin-Alexander Company denied that there were any such contracts, and the Detroit Company in addition pleaded that it was a *bona fide* purchaser from the former company. It appeared from the testimony that for some time prior to January 14, 1901, the Martin-Alexander Company owned and operated a saw mill plant in the vicinity of these lands; that most, if not all, of the entrymen were its employees; that it furnished all the money for the purchase prices of these lands as well as for the expenses connected with the entries, and that after the entries the entrymen, with three exceptions, executed conveyances to it of all the standing timber. Fifty-eight and one-half per cent of the stock of the Martin-Alexander Company belonged to E. B. Martin, while A. V. Alexander controlled the remainder, which was owned by himself, his wife, and J. O. Means.

On January 14, 1901, the Detroit Company purchased the entire property of the Martin-Alexander Company for $60,000 cash and an assumption of its obligations, amounting to $17,456.79. Prior to May 9, 1901, patents were issued for all the lands, thirteen having been issued before January 14, 1901. After the purchase from the Martin-Alexander Company the Detroit Company obtained deeds of the lands from the patentees of twenty-seven of the tracts.

The Circuit Court found that the transactions between the entrymen and the Martin-Alexander Company were not in conflict with the statute, that there were no agreements between them and it prior to the entries in respect to conveyances of the standing timber, and that there was only the mere expectation on the part of the company that it would be able to purchase the timber. Thereupon it dismissed the bill. (124 Fed. Rep. 393.) The Court of Appeals, reviewing the testimony, held that there were contracts between the parties making the entries and the Martin-Alexander Company prior to the entries, and that therefore those entries were in fraud of the act, but it also found that the purchase by the Detroit Company was in good faith, and that therefore that company was entitled to protection in its purchase. It ordered the bill dismissed as to the twenty-seven tracts for which patents had been issued and conveyances made to the Detroit Company. As to the seventeen which had not been conveyed, it ordered a decree cancelling the patents, but dismissing the bill so far as respects any relief claimed against the Detroit Company. (67 C. C. A. 1.)

Mr. Justice BREWER delivered the opinion of the Court.

The able and elaborate opinions of both the Circuit Court and the Court of Appeals relieve us from much labor. There are two questions of fact: First, whether the parties making the entries had, prior to acquiring title from the Government, made any agreement with the Martin-Alexander Company for a conveyance of an interest in the properties, or were seeking to acquire title solely for their own benefit. Second, whether the Detroit Company was a purchaser in good faith from the Martin-Alexander Company. With reference to the first question, the Circuit Court was of the opinion, that there were no agreements between the parties. The Court of Appeals was of a different opinion, and held that the entries were made in pursuance of such agreements. This is a case in in equity, and while in such a case questions of fact are always open to consideration by an appellate court, great respect is paid to the conclusions of the trial court in respect to them. Certainly, if the Circuit Court and the Court of Appeals had agreed we should be very loath to disturb their conclusion. Differing as they do in the present case, we have examined this question, and agree with the Court of Appeals. The entire management of these entries was in the hands of an agent of the Martin-

Alexander Company. It furnished the moneys, both for the purchase prices and all expenses, and it is not easy to believe that it did all this on a mere expectation that after the entries had been made it could purchase the timber. It is a much more reasonable conclusion that it had an understanding with the parties making the entries respecting purchases and prices. It is quite likely that the entrymen were not conscious of wronging the Government, and thought that if it received the full price demanded that was enough. The testimony of one witness suggests at least that they may have been advised that there was no contract unless it was in writing, and that hence they could conscientiously take the oath required in connection with an entry. So, without casting any imputation of intentional perjury on those parties, we agree with the Court of Appeals that the testimony points strongly to the fact that the entries were in pursuance of an understanding or agreement with the Martin-Alexander Company, that, as it was advancing all the money, the entrymen should convey to it the standing timber at a fixed price.

With reference to the second question of fact, the Circuit Court made no finding, having disposed of the case by its conclusion in respect to the first. The Court of Appeals found that the Detroit Company was a purchaser in good faith from the Martin-Alexander Company. Here, too, we have examined the testimony, and are satisfied that the conclusion of the Court of Appeals was correct. A brief statement of the salient facts may be not unimportant. The headquarters of the Detroit Company were in St. Louis, of the Martin-Alexander Company in southwest Arkansas. They dealt at arm's length. On December 20, 1900, Alexander, of the Martin-Alexander Company, applied to U. L. Clark, president of the Detroit Company, at St. Louis, to purchase Martin's interest in the Martin-Alexander Company. Clark declined, stating that the Detroit Company would make no purchase of a fractional interest in the property. Thereupon it was arranged that he should make an examination with a view to the purchase of the entire property. The Detroit Company's inspector was sent to Arkansas to examine the lands. Clark himself went down in the January following, and, after receiving the report of the inspector, terms of sale were, on January 14, agreed upon; $60,000 cash and the assumption of the Martin-Alexander Company's debts. The $60,000, by agreement between the stockholders of the Martin-Alexander Company, were divided, $34,850 to Martin, $24,850 to Mrs. Alexander, $150 to A. V. Alexander, and $150 to J. O. Means. Martin and Means were paid at once; the debts were also promptly paid. Alexander desired to take stock in the Detroit Lumber Company in lieu of the money coming to his wife and himself. Clark was not then authorized to make such arrangement, but subsequently the stock of the Detroit Lumber Company was increased and the Alexanders were paid in full in that stock. The entire property of the Martin-Alexander Company, included in which

were the saw mill, tram and logging roads, these timber contracts and other like contracts and also all stock on hand, was at the time of the purchase, January 14, turned over to the Detroit Lumber Company, which thereafter continued the business. The Martin-Alexander Company had no deeds of the lands in controversy, but simply contracts for the timber thereon, and in order to be relieved from the necessity of keeping accounts with respect to the different tracts the Detroit Company proceeded to obtain deeds from twenty-seven of the patentees, paying on an average $25 apiece therefor, which was a fair price for the lands after the timber had been cut off. It had no knowledge or intimation that there was anything wrong in the titles until the last of September or the first of October, 1901—more than four months after the Government had issued its patents for all the lands—when it received a notice to that effect from a Government inspector.

Now we remark that there is no intimation in the testimony that the purchase price was not paid by the Detroit Company in cash and stock as agreed upon, no suggestion that the price was an unreasonable one. There was nothing strange or unnatural in the contract between the companies; on the contrary it was one which might well be entered into by parties situated as these were. But it is contended by the Government that if the Detroit Company had examined with care the books of the Martin-Alexander Company, and the papers which it turned over as evidences of its titles, it would have perceived that the timber contracts were made shortly after the issue of the final receiver's receipts, that the parties making the contracts were all or nearly all employes of the Martin-Alexander Company, to whom moneys had been advanced, and with each of whom an account was being kept; that it was its duty to critically examine these matters in order to be sure that the titles which it was acquiring were good. In their brief counsel for the Government say:

"We claim that the law as laid down in *Hawley* v. *Diller*, that one who takes title before the issuance of patent cannot claim to be a *bona fide* purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued."

We do not understand the law to be as stated, or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that the vendor is a wrongdoer, and that, therefore, he must make a searching inquiry as to the validity of his claim to the property. The rule of law in respect to purchases of land or timber is the same as that which obtains in other commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there

are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith. *Jones* v. *Simpson*, 116 U. S. 609–615. He is not bound to make a searching examination of all the account books of the vendor nor to hunt for something to cast a suspicion upon the integrity of the title.

It is further said that the written contract of sale from the Martin-Alexander Company to the Detroit Company was not executed till March 1, 1901, and that on the 14th of January, 1901, Martin resigned his position as president of the Martin-Alexander Company, and Clark, the president of the Detroit Company, was elected president of the former company; that, as the chief executive of that company, he was charged with knowledge of all that the company knew, and that therefore, before the written contract was entered into, he and the Detroit Company had constructive notice of the wrongful character of these timber contracts. But that is a mere evasive technicality. The bill charges and the answer admits the sale on January 14, and the facts, as disclosed by the testimony, are that Martin desired to leave at once on receipt of his money and return to his home in Illinois; that Clark was put in his place as president to enable the Martin-Alexander Company to close up its outstanding affairs. The real contract between the parties was entered into before Clark became president, and all that was afterwards done was simply to put in writing the terms of the contract which had been agreed upon. Equity looks at the substance and not at the mere form in which a transaction takes place. The rule in respect to constructive notice was thus stated in *Wilson* v. *Wall*, 6 Wall. 83, 91:

"A chancellor will not be astute to charge a constructive trust upon one who has acted honestly and paid a full and fair consideration without notice or knowledge. On this point we need only refer to Sugden on Vendors, p. 622, where he says: 'In *Ware* v. *Lord Egmont*, the Lord Chancellor Cranworth expressed his entire concurrence in what, on many occasions of late years, had fallen from judges of great eminence on the subject of constructive notice, namely, that it was highly inexpedient for courts of equity to extend the doctrine. When a person has not actual notice he ought not to be treated as if he had notice, unless the circumstances are such as enable the court to say, not only that he might have acquired, but also that he ought to have acquired it but for his gross negligence in the conduct of the business in question. The question, then, when it is sought to affect a purchaser with constructive notice, is not whether he had the means of obtaining and might by prudent caution have obtained the knowledge in question, but whether not obtaining was an act of gross or culpable negligence.'"

And, again, in *Townsend* v. *Little*, 109 U. S. 504, 511:

"Constructive notice is defined to be in its nature no more than evidence of notice, the presumption of which is so violent that the court will not even allow of its being controverted. *Plumb* v. *Fluitt*, 2 Anst. 432; *Ken-*

nedy v. *Green*, 3 My. & K. 699. . . . As said by Strong, J., in *Meehan* v. *Williams*, 48 Penn. State, 238, what makes inquiry a duty is such a visible state of things as is inconsistent with a perfect right in him who proposes to sell. See also *Holmes* v. *Stout*, 3 Green, C. H. 492; *McMechan* v. *Griffing*, 3 Pick. 149; *Harwick* v. *Thompson*, 9 Ala. 409."

In the light of these authorities we see nothing which casts any imputation on the conduct of the Detroit Company, or that tends to show that it was not a purchaser in absolute good faith.

Now, what is the law controlling under these circumstances? Much reliance is placed by the Government on *Hawley* v. *Diller*, 178 U. S. 476, which, affirming prior cases, holds that an entryman under the timber act acquires only an equity, and that a purchaser from him cannot be regarded as a *bona fide* purchaser within the meaning of the act. But the Detroit Company purchased twenty-seven tracts after the issue of the patents therefor. And in making these purchases it dealt, not with the Martin-Alexander Company, but directly with the patentees. While the amounts paid were small, yet, as counsel for the Government admit in their brief that "the land without the timber is of no value," there can be no suggestion of inadequacy of price. As, also, it had no knowledge or suspicion of wrong in the titles, it is, as to these tracts, strictly and technically, within the language of the act, a *bona fide* purchaser. If it be contended that, by virtue of the contracts for the sale of timber, it had acquired some interest in the lands prior to the issue of patents, it is sufficient to say that by the doctrine of relation the patents, when issued, became operative as of the dates of the entries. It is true that this doctrine is but a fiction of law, but it is a fiction resorted to whenever justice requires. It is that principle by which an act done at one time is considered to have been done at some antecedent time. It is a doctrine of frequent application, designed to promote justice. Thus, a sheriff's deed takes effect not of its date, but of the time when the lien of the judgment attached. The ordinary railroad land grants have been grants *in presenti*, and under them the title has been adjudged to pass, not at the completion of the road, but at the date of the grant. *Leavenworth, Lawrence & Galveston Railroad* v. *United States*, 92 U. S. 733; *St. Paul etc. Railway Co.* v. *Phelps*, 137 U. S. 528; *St. Paul & Pacific* v. *Northern Pacific*, 139 U. S. 1; *United States* v. *Southern Pacific Railroad*, 146 U. S. 570. A patent from the United States operates to transfer the title, not merely from the date of the patent, but from the inception of the equitable right upon which it is based. *Shepley* v. *Cowan*, 91 U. S. 330. Indeed, this is generally true in case of the merging of an equitable right into a legal title. Although the patents in this case were not issued until after the sales of the timber, yet when issued they became operative as of the date of the original entries. This doctrine has frequently been recognized by this and other courts. *Landes* v.

Brant, 10 How. 348; *Lessee of French and Wife* v. *Spencer*, 21 How. 228; *Stark* v. *Starrs*, 6 Wall. 402; *Lynch* v. *Bernal*, 9 Wall. 315; *Gibson* v. *Chouteau*, 13 Wall. 92; *Simmons* v. *Wagner*, 101 U. S. 260; *Jackson* v. *Ramsay*, 3 Cow. 75; *Welch* v. *Dutton*, 79 Ill. 465; *Ormiston, Guardian*, v. *Trumbo, Admr.*, 77 Mo. App. 310. In the first of these cases it was said (p. 372):

"To protect purchasers, the rule applies, that 'where there are divers acts concurrent to make a conveyance, estate, or other thing, the original act shall be preferred; and to this the other acts shall have relation,' as stated in Viner's Abr. tit. Relation, 290. . . . Cruise on Real Property, vol. 4, p. 551, lays down the doctrine with great distinctness. He says: 'There is no rule better founded in law, reason, and convenience than this, that all the several parts and ceremonies necessary to complete a conveyance shall be taken together as one act, and operate from the substantial part by relation.' . . . Applying the doctrine of relation, and taking all the several parts and ceremonies necessary to complete the title together, 'as one act,' then the confirmation of 1811 and the patent of 1845 must be taken to relate to the first act; that of filing the claim in 1805."

In *Simmons* v. *Wagner*, p. 261:

"Where the right to a patent has once become vested in a purchaser of public lands, it is equivalent, so far as the Government is concerned, to a patent actually issued. The execution and delivery of the patent after the right to it has become complete are the mere ministerial acts of the officers charged with that duty. *Barney* v. *Dolph*, 97 U. S. 652."

See also *United States* v. *Freyberg*, 32 Fed. Rep. 195, a case in the Circuit Court for the Eastern District of Wisconsin, in which it was held by Judge Dyer that an action brought by the Government to recover for timber cut from land, which had been entered as a homestead, but the full equitable title of which had not then passed to the entryman, either by the required occupation of the premises or by a commuting of the homestead to a pre-emption entry—an action maintainable at the time it was commenced—was defeated by the issue of the final receiver's receipt and the consequent perfection of a full equitable title.

Counsel for the Government deny the application of this principle in the present case on the ground, first, that it gives vitality and validity to a wrongful acquisition of title from the Government. They say that equity is never founded on a wrong, and that because the original entries were wrongful the doctrine of relation will not be applied. But this is a clear misunderstanding of the purpose and scope of the doctrine of relation. If the original entries were rightful there is no need of its application, for the patents would pass perfect titles. The equity is founded on the rightful conduct of the purchaser and not on the wrongful conduct of the entrymen. It upholds the purchaser in his honest purchase notwithstanding the wrongful character of the entries. This is akin to the ordinary

rule in respect to a *bona fide* purchaser. Equity sustains the title in spite of the fact that his grantor may have wrongfully obtained it, and upholds it because of his rightful conduct.

Counsel also say that the question is settled by the decision in *Hawley* v. *Diller*, *supra*, relying upon the second paragraph in the headnotes:

"An entryman under this act acquires only an equity, and a purchaser from him cannot be regarded as a *bona fide* purchaser within the meaning of the act of Congress unless he become such after the Government, by issuing a patent, has parted with the legal title."

There are two or three answers to this contention. In the first place, the headnote is not the work of the court, nor does it state its decision—though a different rule, it is true, is prescribed by statute in some States. It is simply the work of the reporter, gives his understanding of the decision, and is prepared for the convenience of the profession in the examination of the reports. In the second place, if the patent referred to in that headnote is a patent issued upon a wrongful entry, no such fact appeared in the case, because no patent was issued upon the entry charged to have been wrongful, but after that entry had been canceled, a patent was issued to Diller on a new entry. If it refers to some other patent than one issued upon a wrongful entry, it has no pertinency, for the doctrine of relation never carries a patent back to the date of any other entry than that upon which it is issued. And finally the headnote is a misinterpretation of the scope of the decision.

With reference to the other tracts and the denial of any relief, by accounting or otherwise, against the Detroit Company, it is contended that as prior to the issue of a patent the Land Department could have set aside the entries on account of the fraudulent contracts, the courts will now grant the same relief; and further, that inasmuch as the patents are by this decree cancelled and the title restored to the Government the Detroit Company must be regarded as a wrongdoer in respect to the timber which it took from the lands prior to the decree, and an accounting should have been ordered. But this ignores the fact that the Detroit Company acted in good faith and purchased the timber from those having an apparently perfect equitable title thereto. It becomes necessary to inquire what is the significance of a final receiver's receipt and the effect of a cancellation by the Land Department of such a receipt. The receipt is an acknowledgment by the Government that it has received full pay for the land that it holds the legal title in trust for the entryman and will in due course issue to him a patent. He is the equitable owner of the land. It becomes subject to State taxation, and under the control of State laws in respect to conveyances, inheritances, etc. *Carroll* v. *Safford*, 3 How. 441; *Witherspoon* v. *Duncan*, 4 Wall. 210; *Simmons* v. *Wagner*, *supra*; *Winona and St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526; *Cornelius* v. *Kessel*, 128

U. S. 456; *Hastings & Dakota R. R. Co.* v. *Whitney*, 132 U. S. 357; *Benson Mining Co.* v. *Alta Mining Co.*, 145 U. S. 428.

Indeed, in some of the opinions of this court, emphasizing the value of a receiver's receipt, there are expressions which seem to underestimate the significance of a patent. *Wisconsin Central R. R. Co.* v. *Price County*, 133 U. S. 496, 510; *Deseret Salt Co.* v. *Tarpey*, 142 U. S. 241, 251. For it must be remembered that the latter is the instrument which passes the legal title, and that until it is issued the legal title remains with the Government and is subject to investigation and determination by the Land Department. *Barden* v. *Northern Pacific R. R. Co.*, 154 U. S. 288, 326; *Michigan Land & Lumber Co.* v. *Rust*, 168 U. S. 589, 592; *Guaranty Savings Bank* v. *Bladow*, 176 U. S. 448. But while until the issue of the patent the land is under the control of the Land Department, which, upon proper investigation and for sufficient reasons, may set aside the certificate of entry, yet this power of the Land Department cannot arbitrarily be exercised without notice to the entryman, and if improperly exercised the rights of the entryman may be enforced in the courts after the patent has issued to other parties. *Guaranty Savings Bank* v. *Bladow*, *supra*. It is true, as against the Government, and while the title remains in the Government, he may not be able to enforce his equity, because no action can be maintained against the Government, except upon contract, express or implied. *United States* v. *Jones*, 131 U. S. 1. But while he may not sue on his equity, he may protect that equity when sued by the Government. It is sometimes said that a legal title with an equity is paramount to an equity alone, but this is not strictly true unless the equities are equal, for sometimes a superior equity may be adjudged paramount to a legal title and an inferior equity. *Garland* v. *Wynn*, 20 How. 8; *Lytle* v. *Arkansas*, 22 How. 192; *Lindsay* v. *Hawes*, 2 Black, 554; *Wirth* v. *Branson*, 98 U. S. 118; 2 Pomeroy's Eq. Jur., Sec. 678, and following. But we need not stop to inquire what rights the Detroit Company will have after a patent has issued. It is enough now to hold that it can defend its equities against the suit of the Government.

It is a mistake to suppose that for the determination of equities and equitable rights we must look only to the statutes of Congress. The principles of equity exist independently of and anterior to all Congressional legislation, and the statutes are either annunciations of those principles or limitations upon their application in particular cases. In passing upon transactions between the Government and its vendees we must bear in mind the general principles of equity and determine rights upon those principles except as they are limited by special statutory provisions. And clearly upon those principles a party purchasing an equitable right is entitled to be protected in his purchase so far as it can be done without trespassing upon the rights of other parties. The statute provides that

if an entry is wrongfully made it may, prior to patent, be set aside by the Land Department, the entryman forfeiting the money which he has paid. In other words, by the action of the department the equitable title is cancelled and restored to the Government. It then has both the full title to the land and the money which had been paid for it. And this is the penalty which is imposed for the wrongful entry. Certainly when the Government retains the full price which it has placed upon the land and also recovers the land itself it is abundantly compensated for any wrong which has been attempted by the entryman. And a party who deals with such entryman—relying upon the evidences of his entry, which are in all respects in form good and sufficient, and are an acknowledgment by the Government officials of a rightful entry—is justly entitled to the consideration of a court of equity. In this case, finding the entrymen holding apparently valid equitable titles to the lands, it entered into contracts with them for the purchase of the timber. It cut and removed the timber—all in good faith. It is equitable that, having thus acted in good faith, it should not be held to account for the timber which it has already paid for and cut and removed in reliance upon these contracts. The Government has every dollar which it would have received in case of a perfectly valid entry, and has also recovered the land. Surely it is not just for it to ask further payment, and from a party who dealt in good faith with the entrymen, relying upon the titles which it had created. If the Detroit Company has taken some timber from the land it has once paid for it, and ought not to be compelled to pay a second time, and to the Government, which has already received full pay for the land, timber and all. It is inequitable to give to the Government not merely the land, and the price which it charged for the land, but also the value of the timber obtained by the Detroit Company. It is doubling the penalty which the statute imposes, or if not doubling, at least largely increasing it.

We think the decision of the Court of Appeals was right, and it is

Affirmed.

Mr. Justice HARLAN and Mr. Justice MCKENNA dissent.

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Test:

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